# Case Answers- TOC – Nirmal

## Codes Solve

### Gould

#### Speech codes solve – empirics and social studies.

**Gould ’10** (Jon B. Gould is a professor in the Department of Justice, Law and Society and at the Washington College of Law at American University, where he is also director of the Washington Institute for Public and International Affairs Research. 2010-02-15, University of Chicago Press, “Speak No Evil: The Triumph of Hate Speech Regulation” | SP)

Yet the very adoption of hate speech policies has influenced behavior on several campuses. This point was repeated to me by many administrators at the schools I visited, who reported the rise of a “culture of civility” that eschews, if not informally sanctions, hateful speech. “Don’t mistake symbolism for impotence,” they regularly reminded me. Symbols shape and reflect social meaning, providing cues to the community about the range of acceptable behavior. Adopting a hate speech policy, then, could have persuasive power even if it were rarely enforced. Consider the dean of students at a northeastern liberal arts college, who spoke proudly of her school’s hate speech policy. Had the policy been formally invoked, I asked. “Rarely,” she told me, but the measure “sets a standard on campus. It gives us something we can point our finger to in the catalog to remind students of the expectations and rights we all have in the community.” This sentiment was repeated by the president of a well-known institution, who claimed that “we didn’t set out to enforce the policy punitively but to use it as the basis for our educational efforts at respecting individuality.” Still another administrator admitted that, “while we’ve rarely used the policy formally, it does give support to students who believe their rights have been violated. They’ll come in for informal mediation and point to the policy as the reason for why the other person must stop harassing them.” Sociologists would call this process norm production— that symbolic measures can condition and order behavior without the actual implementation of punitive mechanisms. 8 Hate speech policies set an expected standard of behavior on campus; college officials employ orientation sessions, extracurricular programs, and campus dialogue to inculcate and spread the message; and over time an expectation begins to take root that hate speech is unacceptable and should be prohibited. Of course, this mechanism makes regulation a self-policing exercise— colleges need not take formal or punitive action— but the effect is to perpetuate a collective norm that sees hate speech as undesirable and worthy of prohibition. Moreover, considering the isomorphic tendencies of college administrators, the creation of speech policies— or speech norms— at respected and prestigious institutions has a “trickle down” effect throughout academe. Again, sociologists would call this process normative isomorphism, but most people know the phenomenon as “keeping up with the Joneses.” 9 If Harvard, Berkeley, or Brown passes measures against hate speech, then institutions lower in the academic food chain are likely to take note and follow suit. If prestigious institutions advance campus norms that eschew hate speech, then both peer and “wannabe” institutions are likely to consider and replicate such informal rules. Indeed, this is the very fear of FIRE and its compatriots— that if PC policies are not checked now, their message will spread throughout academe infecting other campuses. What FIRE fails to say, but undoubtedly must be thinking, is that informal law and mass constitutionalism are at stake if the spread of speech regulation is not curbed. FIRE can hang its hat on R.A.V., Doe, UWM Post, and the other court cases in which judges have overturned college hate speech policies, but as hate speech regulation continues to flourish on college campuses, informal speech norms are at stake throughout the larger bounds of civil society.Whatever one thinks of FIRE and its agenda, its supporters are like the oldfashioned fire brigade that excitedly shows up at a burning building only to toss paltry pails of water on the inferno. Hate speech regulation has already crossed the firebreak between academe and the rest of civil society and is well on its way toward acceptance in other influential institutions. The initial signs are found in surveys of incoming college freshmen. Shortly after R.A.V., researchers began asking new freshmen whether they believe that “colleges should prohibit racist/sexist speech on campus.” 10 In a 1993 survey, 58 percent of first-year students supported hate speech regulation, a number that has stayed steady and even grown a bit in the years following. By 1994, two thirds of incoming freshmen approved of hate speech prohibitions, with more recent results leveling off around 60 percent. 11 Unfortunately, there are not similar surveys before 1993 to compare these results against, but it is a safe bet that support would have been minimal through the mid-1980s when the issue had not yet achieved salience. More to the point, the surveys show that support for speech regulation is achieved before students ever set foot on campus. If, as the codes’ opponents claim, colleges are indoctrinating students in favor of speech regulation, the influence has reached beyond campus borders. New students are being socialized to this norm in society even before they attend college.

#### Gould’s method is sound

**Gould ’10** (Jon B. Gould is a professor in the Department of Justice, Law and Society and at the Washington College of Law at American University, where he is also director of the Washington Institute for Public and International Affairs Research. 2010-02-15, University of Chicago Press, “Speak No Evil: The Triumph of Hate Speech Regulation” | SP)

Rather than employing factor analysis to tease through the quantitative relationships, the study turned to qualitative research to complete the inquiry. Cer-tainly, the quantitative tests were useful, narrowing the potential factors behind the speech codes, but even the variables uncovered failed to identify the likely actors behind the speech codes nor explain their motives. To investigate these questions— and to understand how schools responded to the contrary judicial decisions— the study employed a variety of qualitative techniques. First, a subset of schools was selected from the sample of 100 for more intensive inquiry. To examine the initial adoption (or rejection) of speech codes, the study employed four paired samples of institutions. In one pair the schools had rejected speech codes, in two others the schools had adopted speech codes, and in a final pair the schools differed in their adoption of hate speech policies. At each school the qualitative inquiry was a mix of secondary research and personal interviews. I began by searching Lexis/Nexis and then closeted myself in college archives to review past campus newspapers, local coverage of campus events, as well as reported deliberations from campus committees and relevant administrative offices. My intention was to become well versed in the events that occurred on campus before meeting those who would characterize the events and provide their own interpretations. The interviews were semistructured, snowball style lasting between 30 to 60 minutes. At each campus I spoke with 10 to 25 people, including faculty, staff, and administrators who were involved in, or familiar with, their campus’s consideration of hate speech policies. I did not, however, interview students. Since the secondary research was conducted between 1996 and 2000, most of the students who had been on campus at the time of speech code deliberations were gone and inaccessible. The omission of students excludes the perspectives of an essential part of any school’s community, but, in the study’s defense I was still able to reach the other three bulwarks of a campus— its faculty, staff, and administrators.

## Inherency

### FS High Now

#### No impact to the aff—most people think we already have free speech, nothing is going to change

**Dwyer 16** (Liz, writes about race, parenting, and social justice for several national publications, “College Students Say Free Speech Has Its Limits,” April 4, 2016, http://www.takepart.com/article/2016/04/04/college-students-free-speech-limits//[LADI](http://www.theladi.org/evidence))

Last fall, the football team at the University of Missouri went on strike to protest slow administrative response to incidents of racial harassment on campus, joining other students in a movement that resulted in the resignation of the school’s president. Although students at the school asserted their right to protest, a viral video of Tim Tai, a student photojournalist, being blocked from documenting what was happening raised concerns over whether free-speech rights on the campus were eroding. “The First Amendment protects your right to be here and mine,” Tai told the protesters gathered around him. “Forget a law. How about humanity and respect?” replied a student. A few minutes later, professor Melissa Click, now fired, could be seen on the video trying to prohibit another student from recording the incident. “Hey, who wants to help me get this reporter out of here?” Click yells to the protesters. According to a Gallup survey of college students, released Monday in collaboration with the Knight Foundation and the Newseum Institute, most undergraduates across the United States believe First Amendment rights are secure. At the same time, nearly half think some restrictions on free speech are justified. “Students do appear to distinguish controversial views from what they see as hate. They believe colleges should be allowed to establish policies restricting language and behavior that are intentionally offensive to certain groups, but not the expression of political views that may upset or offend members of certain groups,” wrote the authors of a report accompanying the survey. The survey polled a nationally representative sample of 3,000 college students ages 18 to 24 about their attitudes toward the First Amendment. While 78 percent said that “colleges should expose students to all types of speech and viewpoints,” the report’s authors note that 69 percent believe policies against slurs and intentionally offensive language are needed.

### Speech Codes Down

#### Speech codes rapidly declining

**FIRE 17** [Foundation for Individual Rights in Education, "Spotlight on Speech Codes 2017," 2017] AZ

FIRE surveyed 449 schools for this report and found that 39.6 percent maintain severely restrictive, “red light” speech codes that clearly and substantially prohibit constitutionally protected speech. This is the ninth year in a row that the percentage of schools maintaining such policies has declined, and this year’s drop was nearly ten percentage points. (Last year, 49.3 percent of schools earned a red light rating.) In addition, an unprecedented number of schools have eliminated all of their speech codes to earn FIRE’s highest, “green light” rating: As of September 2016, 27 schools received a green light rating from FIRE. This number is up from 22 schools as of last year’s report. In another heartening trend, a growing number of schools are adopting statements in support of free speech modeled after the one adopted by the University of Chicago in January 2015. As of this writing, 20 schools or faculty bodies in FIRE’s Spotlight database had endorsed a version of the “Chicago Statement.”

### Speakers High

#### Free speech on campus high now- the aff does nothing

**Wolf 4-21** [Jeremy Bauer-Wolf, 4-21-2017, "Auburn, Berkeley incidents illustrate how difficult it is for public colleges to bar speakers," No Publication, <https://www.insidehighered.com/news/2017/04/21/auburn-berkeley-incidents-illustrate-how-difficult-it-public-colleges-bar-speakers>] NB

Citing safety concerns, two universities this week attempted to block planned appearances at their campuses -- one from white nationalist Richard Spencer at Auburn University, the other from conservative political commentator Ann Coulter at University of California, Berkeley. Both right-wing figures defied the universities, boasting they would show up regardless, and the institutions, both public, eventually said that they would allow the events, in Auburn’s case because a federal judge backed Spencer’s right to speak. Spencer addressed Auburn’s campus Tuesday. Coulter has been invited to appear May 2, not April 27 as originally scheduled. [Berkeley on Thursday reversed its initial announcement that Coulter couldn't come until the fall.](https://www.insidehighered.com/news/2017/04/20/berkeley-says-ann-coulter-may-not-appear-there-next-week" \t "_blank) Late Thursday, Coulter was tweeting that she was going to come on the original date, with or without the university's approval. The decisions to cancel had been panned as a violation of free speech protections considered paramount on college campuses and protected, at public institutions, by the First Amendment. Legal experts and academics say that public colleges and universities need to prove a real threat and meet a high standard of proof before invoking student and attendee welfare as a reason to curtail expression protected by the First Amendment.

## AT: Backlash Protests

### Protests High Now

#### The aff doesn’t change anything- their description of the Berkeley protests fail to recognize that those are allowed in the status quo

#### Student activism and protests are at an all-time high. HERI 16 Higher Education Research Institute 16.

Higher Education Research Institute. “College students’ commitment to activism, political and civic engagement reach all-time highs”. UCLA Newsroom. February 10, 2016. <http://newsroom.ucla.edu/releases/college-students-commitment-to-activism-political-and-civic-engagement-reach-all-time-highs>.

Colleges and universities across the U.S. experienced an increase in student activism over the past year, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

#### This proves the impacts of hate speech outweigh:

#### A. Timeframe- hate speech happens now and psychologically hurts people but we don’t know when the aff’s protests will actually help

#### B. Uniqueness- protests are civil right now but the aff emboldens more hate which further hurts other minorities

### Violent Protests Bad

#### The aff emboldens the worst of violent protestors- that isolates other minority protestors and triggers political backlash

Ramaiyer 2-2 [Malini Ramaiyer (First Year Student At Berkeley), 2-2-2017, "Opinion," New York Times, <https://www.nytimes.com/2017/02/02/opinion/how-violence-undermined-the-berkeley-protest.html>] NB

BERKELEY, Calif. — What do you do as a reporter when a protest begins? You cover it. But what about when the man being protested is known for rhetoric that makes you nauseated? Or when you see a student get beaten up because he looked “like a Nazi”? How do you remain objective? Those were the questions that faced me when, as a reporter for the student newspaper at the University of California, Berkeley, I covered [the protest on Wednesday night](http://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/) at the college that turned violent, drawing national attention. I didn’t know what to think about it all, and truthfully, I still don’t. The protesters were demonstrating against a scheduled speech on campus by Milo Yiannopoulos, a Breitbart editor and right-wing provocateur, who had been invited by the Berkeley College Republicans. This was always going to be a controversial event. Mr. Yiannopoulos has been giving inflammatory speeches on a college tour meant to push back against what he sees as the stifling politically correct left. But his language has veered decidedly toward hate speech. At the University of Wisconsin-Milwaukee, for example, he singled out a transgender student for ridicule by name. Because of actions like that, many Berkeley students and more than 100 faculty members petitioned the university to block the event, but the chancellor, Nicholas Dirks, declined to do so, citing free speech. This, of course, raises questions about free speech: Is it free speech if it makes us feel unsafe in our own skin? On the other hand, what does this campus represent if it doesn’t respect the rights of people with whom many of us disagree? Protests are a staple at Berkeley and I’ve always appreciated the activism here. Wednesday night, I saw many creative posters urging people to fight Islamophobia, xenophobia, homophobia, transphobia, sexism and racism. One group of protesters wore red ribbons emblazoned “Resist,” while another led a “resistance dance party” near the venue. Until Wednesday, I never felt in danger during a protest. Around 7 p.m. I saw a huddle of people yelling at one another. As more people surrounded them, a burning red trucker’s hat was held up on a stick. There were reports that another student wearing what appeared to be a “Make America Great Again” hat was severely injured. Then I saw someone wearing all black walk up to a student wearing a suit and say, “You look like a Nazi.” The student was confused, but before he could reply, the black-clad person pepper-sprayed him and hit him on the back with a rod. e I ran after the student who was attacked to get his name and more information. He told me that he is a Syrian Muslim. Before I could find out more, he fled, fearing another attack. Amid the chaos came word the event had been canceled. It was clear early on that the majority of violent protesters most likely were not from the campus. Still, in the aftermath, I heard people say that peaceful demonstrations would not have succeeded in preventing Mr. Yiannopoulos from speaking. So was violence appropriate? A Trump supporter was hurt. A Syrian Muslim student was hurt. Does either of those statements seem more outrageous than the other? Violence often has unintended consequences. For one thing, those who initiated the violence implicated many others in it too. Black students, Latino students, gay students and others who are already vulnerable — and were protesting peacefully — became even more vulnerable to the backlash. When the violent protesters thought they were defeating “fascists,” could they imagine who else they might be hurting? When my co-reporter was threatened as she recorded students marching down the street, and I was threatened when I took pictures of the vandalism, I myself became afraid and upset. There are so many people in this country who have been fighting social injustices for years. Acts of violence undermine their efforts, and can reverse good, patient work. The beauty and the defining characteristic of peaceful protests is that they are a struggle, and they don’t always translate to concrete results. How do protesters achieve success when they are screaming at the top of their lungs and it doesn’t seem as if anyone can hear? I understand that frustration. I have felt that frustration. However, just because peaceful protest doesn’t get as much attention as punching someone in the face, it doesn’t mean that we should abandon the commitment to peace. Violence doesn’t encourage social progress, and it certainly doesn’t quiet those with whom we disagree. I understand the fight for a more progressive, just society. But this is not how we get there.

#### This outweighs:

#### A. Reversibility- physical harm causes psychological trauma whereas the protests can always happen in a better way

#### B. Turns movements- people are less likely to participate if they realize that protests can hurt them

### Recruitment

#### Allowing more hate speech creates a platform for white supremacist recruiting efforts- that also hurts protests

**Tulp 3-6** [Sophia Tulp, 3-6-2017, "White supremacists are recruiting like crazy on college campuses," USA TODAY College, <http://college.usatoday.com/2017/03/06/white-supremacists-are-recruiting-like-crazy-on-college-campuses/>] NB

If it’s seemed like there are more and more instances of white supremacist language being found on college campuses, that’s because there are. According to a new report released today by the Anti-Defamation League’s Center on Extremism, white supremacists are channeling recruitment efforts towards students on college campuses more so than in the past — shifting their recruitment tactics from online to in-person. The ADL has tracked 104 incidents of white supremacist fliering on college campuses since the school year began in September 2016, with an increase in activity since January 2017, when 63 of the total incidents — 61% — were reported. In addition to posting signage on campus, other tactics have included distributing racist fliers and organizing [on-campus speeches by controversial activists](http://college.usatoday.com/2016/12/06/students-protest-white-supremacist-at-texas-am-university/" \t "_blank) as well as outreach by white supremacist groups engaging with students. “White supremacists have consciously made the decision to focus their recruitment efforts on students and have in some cases openly boasted of efforts to establish a physical presence on campus,” Jonathan Greenblatt, ADL’s CEO stated in a release accompanying the report. “While there have been recruitment efforts in the past, never have we seen anti-Semites and white supremacists so focused on outreach to students on campus.” USA TODAY College has tracked several instances of white supremacists spreading their messages on U.S. campuses around the country in the past few months, including these: – At Southern Methodist University in Dallas last fall, students and faculty [discovered the circulation of fliers](http://college.usatoday.com/2016/11/17/southern-methodist-smu-racist-fliers/) titled “Why white women shouldn’t date black men” on campus. – At the University of Michigan last fall, [racially charged chalked messages and fliers](http://college.usatoday.com/2016/11/15/racially-charged-fliers-and-chalkings-appear-at-univ-of-michigan/) popped up, including one urging the reporting of undocumented students to U.S. Immigration and Customs Enforcement. – At Vanderbilt in January, [a printer was hacked](http://college.usatoday.com/2017/01/17/vanderbilt-hack-anti-semitic-fliers-printer/) to print out anti-Semitic messages. – Signs [urging viewers to “imagine a Muslim-free America”](http://college.usatoday.com/2017/02/15/muslim-free-america-posters-turn-up-on-multiple-college-campuses/" \t "_blank) appeared on multiple campuses, bearing the logo of pro-white group American Vanguard. Not to mention a spate of such incidents on [campuses around the country last week](http://college.usatoday.com/2017/03/03/offensive-messages-were-reported-this-week-on-several-college-campuses/), many apparently the work of a group called Identity Evropa. The Southern Poverty Law Center issued its own report on white supremacists targeting U.S. colleges and universities [last month](https://www.splcenter.org/fighting-hate/intelligence-report/2017/white-nationalists-work-make-inroads-us-colleges" \t "_blank).

This outweighs:

A. Timeframe- opening up ideas are more likely to make irrational white people ready to join their movement which impedes civil efforts in the long run

B. Probability- the aff’s protests aren’t as successful if they are forced to discuss with more people who are likely to shut them down

### Solvency Deficit

#### The aff isn’t likely to change any minds if people are consistently racist as per their own evidence—they just increase psychological harm

## AT: Divestment

#### Divestment doesn’t work- energy demand stays consistent and creates an investment opportunity for others

**Bradley 3-30** [Robert Bradley Jr., 3-30-2017, "Don't Divest, Invest In Fossil-Fuel America," Forbes, <https://www.forbes.com/sites/robertbradley/2017/03/30/dont-divest-invest-in-fossil-fuel-america/#2ce4a7c72f11>] NB

Fossil-fuel divestment is a [fool's errand](https://www.forbes.com/sites/robertbradley/2016/07/07/fossil-fuel-divestment-a-fools-errand/" \l "cf531372920f" \t "_self) that works against the natural preferences of the great masses. Consumers gravitate toward energies that are most affordable, reliable and ubiquitous. Consequently, U.S. and world energy demand is dominated by natural oil, gas and coal. Divestment does nothing to lower this energy demand. So, the practice has no financial effect on the many thousands of energy firms. In fact, divestment by some creates an investment opportunity for others. Consider the explanation of [William MacAskill](http://www.williammacaskill.com/" \l "about" \t "_blank), CEO of the Centre for Effective Altruism and author of [Doing Good Better: How Effective Altruism Can Help You Make a Difference](https://www.amazon.com/Doing-Good-Better-Effective-Altruism/dp/1592409660" \t "_blank). As described in his New Yorker piece, "[Does Divestment Work?](http://www.newyorker.com/business/currency/does-divestment-work" \t "_blank)", unless the financial fundamentals of a company change (cash flow, debt ratio, etc.), selling stocks for "moral scruples" creates a "bargain" for others. In other words, the more people divest, the greater the buying opportunity for others. As a result, "The [stock] market price stays the same; the company loses no money and notices no difference," concludes MacAskill. Divestment simply transfers wealth from anti to neutral fossil-fuel investors. Pro-carbon-based energy advocates, moreover, smile all the way to the bank. This unintended consequence is surely unwanted by divestment advocates. It is boycotts, not divestment, that would hurt the targeted companies, MacAskill explains. But boycotts are not part of the anti-fossil-fuel movement. In fact, the opposite seems to be the case. Consider the example of leading divestment advocate Leonardo DiCaprio. The movie star [generates](https://www.forbes.com/sites/rrapier/2016/03/01/leonardo-dicaprios-carbon-footprint-is-much-higher-than-he-thinks/" \l "53881ba12bd5" \t "_self) one of the world's largest "carbon footprints" with his use of multiple homes, private jets and a world-sized yacht. DiCaprio may plant trees and drive a Prius to atone for his believed-to-be sins. He has been seen riding a bicycle to make a point. But like Al Gore (remember his $30,000 [utility bill](http://abcnews.go.com/Politics/GlobalWarming/story?id=2906888" \t "_blank)?), DiCaprio's lifestyle fuels the businesses that he admonishes others not to invest in.

#### Trump administration increases the probability of investment—divestment furthers it

**Bradley 3-30** [Robert Bradley Jr., 3-30-2017, "Don't Divest, Invest In Fossil-Fuel America," Forbes, <https://www.forbes.com/sites/robertbradley/2017/03/30/dont-divest-invest-in-fossil-fuel-america/#2ce4a7c72f11>] NB

The investment opportunities for natural gas, coal and oil have only gotten better with the end of the Obama Administration's keep-it-in-the-ground strategy. "If Trump's energy policies cause a rise in demand for oil, gas, or coal," [stated](https://thinkprogress.org/divestment-growth-in-the-age-of-trump-f7831db85cdd" \l ".m25re4vzk" \t "_blank) Natasha Geiling of ThinkProgress, "it could make maintaining investments in fossil-fuel companies more appealing than it would have been otherwise." Indeed. Drilling impediments are being [removed](http://www.oregonlive.com/environment/index.ssf/2017/03/trump_admin_halts_obama-era_ru.html" \t "_blank) and politically blocked pipelines are getting [back on track](http://www.usatoday.com/story/news/politics/2017/03/24/trump-grants-keystone-permit-declares-great-day-american-jobs/99567608/" \t "_blank). Check the newspaper headlines. "[Halliburton will Beef Up and Add 2,000 U.S. Jobs](http://fuelfix.com/blog/2017/03/24/halliburton-adding-2000-u-s-jobs-to-match-growing-oilfield-activity/" \t "_blank)," stated a recent lead in Houston Chronicle. Another Chronicle business story: "[Texas Sluggish on Jobs, but Energy Hiring Up](http://www.houstonchronicle.com/business/texanomics/article/After-big-January-Texas-employment-slows-back-11025276.php" \t "_blank)." Those jobs are in oil and gas. In the Wall Street Journal: "[Oil Investors Tap Deep Cash Well](http://news.morningstar.com/all/dow-jones/us-markets/20170325114/oil-investors-tap-deep-cash-well-wsj.aspx" \t "_blank)." Then the Journal's "Heard on the Street" tip to investors: "[Plenty of Cash Lies Buried in Canada’s Oil Sands](https://www.wsj.com/articles/plenty-of-cash-lies-buried-on-canadas-oil-sands-1490021777" \t "_blank)." This opportunity involves the Trump administration's recent decision to issue a [pipeline permit](http://www.usatoday.com/story/money/2017/03/24/transcanada-keystone-pipeline-permit/99572692/" \t "_blank) to TransCanada to complete the Keystone XL Pipeline. Canadian Prime Minister Justin Trudeau is also supportive of fossil fuels. "No country would find 173 billion barrels of oil in the ground and just leave them there," he [stated](https://cleantechnica.com/2017/03/19/justin-trudeau-no-country-find-173-billion-barrels-oil-ground-just-leave-oil-sands/" \t "_blank). "Nothing is more essential to the U.S. economy than access to a secure, reliable source of energy. Canada is that source."

#### Divestment saps energy from the rest of the world and supercharges the link to the endowments DA

**Bradley 3-30** [Robert Bradley Jr., 3-30-2017, "Don't Divest, Invest In Fossil-Fuel America," Forbes, <https://www.forbes.com/sites/robertbradley/2017/03/30/dont-divest-invest-in-fossil-fuel-america/#2ce4a7c72f11>] NB

Symbolic virtue is costly virtue in the case of fossil-fuel divestment. Divestment wants to interfere with bringing the most affordable, reliable energies to the masses. The International Energy Agency estimated that the world needs [$26 trillion](https://www.iea.org/media/publications/weo/WEO2016Factsheet.pdf" \t "_blank) for fossil-fuel extraction, transportation and refining out to 2040. [Liquefied natural gas investment](https://www.forbes.com/sites/robertbradley/2017/03/17/from-america-to-australia-liberate-resources/" \l "48ad68d93ef1" \t "_self) to make natural gas a global commodity is part of this need. Moreover, divestment hurts stakeholders. A [study](http://divestmentfacts.com/wp-content/uploads/2016/05/Bessembinder-Report-FINAL.pdf" \t "_blank) conducted by a finance professor at Arizona State University estimated that over a two-decade period, colleges that divest from fossil fuels would lose up to 12% of their endowment value -- a loss that could total billions of dollars for many schools. This study also outlined "frictional" costs -- managing portfolios, determining which investments are actually connected to fossil-fuel companies and disentangling those from other holdings. Such costs make divestment financially impractical, if not dangerous.

#### Divestment is harmful- sinvestors generate higher returns

**MacAskill 15** [William MacAskill (Professor of Philosophy @ Oxford) .Gerald Marzorati, 10-20-2015, "Does Divestment Work?," New Yorker, <http://www.newyorker.com/business/currency/does-divestment-work>] NB

This means that divestment risks being harmful. Several studies have shown that, because of the pressure against investing in morally dubious companies, “unethical” investments (sometimes called “sin stocks”) produce higher financial returns for the investor than their “ethical” alternatives. The economists Harrison Hong and Marcin Kacperczyk found that sin stocks outperform other stocks by 2.5 per cent per year. This has even resulted in a niche industry: for instance, the Barrier Fund, formerly known as the Vice Fund, is a “sin-vestor” mutual fund that exclusively invests in companies that are significantly involved in alcohol, tobacco, gambling, or defense. It has beaten the S. & P. 500 by an average of nearly two percentage points per year since 2002. By divesting from unethical companies, “ethical” investors may effectively transfer money to opportunists like the Barrier Fund, who will likely spend it less responsibly than their “ethical” counterparts. Studies of divestment campaigns in other industries, such as weapons, gambling, pornography, and tobacco, suggest that they have little or no direct impact on share prices. For example, the author of a study on divestment from oil companies in Sudan wrote, “Thanks to China and a trio of Asian national oil companies, oil still flows in Sudan.” The divestment campaign served to benefit certain unethical shareholders while failing to alter the price of the stock.

## AT: Marketplace of Ideas

### 1NC- Fails

#### The marketplace of ideas is broken – controversy and profit matters more than genuine thought.

**Hanlon ’17** (Aaron R. Hanlon is Assistant Professor of English at Colby College and advisor for Georgetown University’s MLA/Mellon Foundation “Connected Academics” project., March 6, 2017, “The Myth of the “Marketplace of Ideas” on Campus” <https://newrepublic.com/article/141150/myth-marketplace-ideas-campus-charles-murray-milo-yiannopoulos> | SP)

The latest campus speech controversy erupted last week at Middlebury College, a liberal arts college in Vermont, where protesters shouted down and chased off invited speaker Charles Murray, a fellow at the American Enterprise Institute whom the Southern Poverty Law Center deems a white nationalist. “The demonstrations began conventionally enough, with several hundred organized protesters packed into a lecture hall Thursday, chanting and holding signs,” The Washington Post reported. “They ended with Murray being forced to move his lecture and later being surrounded by an unruly mob made up of students and ‘outside agitators’ as he tried to leave campus.” That this incident turned physical has provided the perfect metaphor for conservatives who have long characterized college students as illiberal “snowflakes” who want to silence anyone they disagree with. Eugene Volokh, who blogs at the Post, called it “[a]nother sad day of brown-shirted thuggery at our nation’s academic institutions.” “It was not, apparently, enough to stop Murray from expounding on his views,’ Andrew Stuttaford wrote at National Review. “He had, in addition, to be punished for them.” And Murray himself, in a post at AEI about the incident, worried that “the intellectual thugs will take over many campuses,” adding, “A campus where a majority of students are fearful to speak openly because they know a minority will jump on them is no longer an intellectually free campus in any meaningful sense. For too long this Manichean conservative narrative, even when reasonably applied, has stood in the way of a more challenging set of questions about free speech on campus: Is there really a “marketplace of ideas,” and does it actually work? Campus speaker invitations and disinvitations reflect a curious paradox. On one hand, there’s clearly a market for speakers for bestselling authors like Murray and Milo Yiannopoulos, the former Breitbart writer and prolific campus provocateur. On the other hand, Murray was met with disinvitation attempts in 2014 and 2016 before he was shouted down last week at Middlebury, reflecting student awareness that the work for which Murray is best known—1994’s The Bell Curve, which was excerpted in the New Republic alongside criticism of it—has been largely discredited among social scientists. Milo accounted for 14 of all 46 disinvitations by students in 2016, reflecting simultaneously his desirability and undesirability among students. The problem, then, is that the “marketplace of ideas” is a misleading metaphor for what’s really happening with campus speakers. Such a “marketplace” does a poor job of signaling and rewarding quality speech and valuable ideas, exemplified by the enthusiasm with which students embrace controversy over substance. And unlike the marketplace for material goods—in which it’s a boon, not a problem, for some loyal consumers to sustain Oreos cookies while others buy Hydrox—the “marketplace of ideas” metaphor promises something more than “to each her own.” The more strenuously the marketplace rejects the ideas of speakers like Murray, the more valuable such speakers become. That is, the libertarian argument for the marketplace of ideas rests on the premise that if, as Mao Zedong put it, we let “a hundred flowers bloom and a hundred schools of thought contend,” the best ideas will emerge triumphant and the lousy and bigoted ones will fall away into obscurity. The reality, however, is that the more strenuously the marketplace rejects the ideas of speakers like Murray, the more valuable such speakers become on account of their rejection. The marketplace of ideas can behave more like a marketplace of controversy in which we perpetually re-litigate discredited ideas precisely because they’re unpopular. This tendency follows from a logic—noble in spirit—that this marketplace may sometimes wrongly reject a gem of an idea, thus we should guard against populism when choosing which ideas should have a platform. But in so many cases—as with Murray, Yiannopoulos, Suzanne Venker, John Deryshire, and others—the ideas on offer have powerful platforms already. The “hidden gem” theory of neglected ideas doesn’t quite apply to speakers with bestselling books, lucrative speaking tours, and ample mass media access. The outsized power of controversy within the marketplace may be cause to avoid interrupting and shouting down speakers. Indeed, while I think disinvitation is the prerogative of any institution with autonomy over its platforms and duty to provide the highest possible quality speakers across the political spectrum, I don’t think it’s smart to shout down people who are already there. Better for those opposed to hearing the speaker to host a separate event and let diminished numbers at the main event speak to the diminished status of bad ideas. Research indicates further that peaceful, civil resistance is more effective than violent resistance. Nevertheless, these matters of tact and strategy shouldn’t overshadow the fact that even when students protest in loud, disruptive, and violent ways, they’re offering an important signal in the marketplace that they don’t want these speakers on campus. The anti-P.C. assumption has been that students don’t want speakers like Murray or Yiannopoulos because they can’t handle, need protection from, or have no counterargument for opposing ideas. Put aside the fact that so-called “snowflakes” watch Game of Thrones, Bill Burr, and South Park in their free time, and thus routinely expose themselves to narratives and jokes about rape, incest, castration, misogyny, and racism, as well as jokes about politically correct college students. Students oppose Murray because they’re aware of his widely publicized arguments about the genetic inferiority of certain races of humans. Framing such rejection as either an inability to be confronted with different views, or an unfair unwillingness to hear the other side out, is disingenuous on both counts, given that student opposition is actually rooted in knowledge of the very public arguments they oppose (whether Murray, who was ostensibly invited to Middlebury to talk about newer work, should have to carry the albatross of The Bell Curve with him every time he writes and speaks about new ideas is a relevant question for another column). Why doesn’t student opposition from the left count as a valuable signal within the marketplace? The thornier question is why student opposition from the left suddenly doesn’t count as a valuable signal within the marketplace. This question gets to the heart of the problem with the “marketplace of ideas” metaphor. Instead of taking vocal opposition to certain ideas, or speaker disinvitations, as the marketplace self-correcting as marketplaces should do, we take left-wing opposition to the likes of Murray and Yiannopoulos as an illiberal gesture. On the contrary, this libertarian metaphor necessitates contestation and rejection for the metaphor to work. This is why anti-P.C. refusal to take left-wing students’ protests seriously as a market signal is either a disingenuous stance or, as I’ve argued previously, an authoritarian one. If it’s disingenuous, it’s because protest speech isn’t being truly countenanced, based on the specious notion that left-wing student disapproval can only come from fragility or petulance rather than knowledgeable, rational opposition. And if the anti-P.C. position is authoritarian, it’s because it involves overriding clear market rejection of certain ideas, refusing to let the market assign low value to ideas that campus conservatives want to hear. As this last scenario suggests, the “marketplace of ideas” metaphor is indeed flawed, because you simply can’t have competition for the best ideas when the marketplace either screens out all speakers in the political “minority” (the conservative accusation) or assigns high value to low-value ideas simply because they’re controversial and have the potential to punish the left. The failure of this framework poses serious questions for anti-P.C. libertarians. Are these critics willing to turn higher education over to a Wild West–style marketplace, even if that marketplace produces a relatively high number of low-value conservative speakers? And are they comfortable trotting out the “marketplace of ideas” argument to defend low-value conservative speakers, as if the bare fact that the marketplace demanded them is a sign of their intellectual value? Indeed, the “marketplace” is an elegant metaphor that doesn’t always behave as it does in our hopes and dreams. In reality, the marketplace of ideas is inextricable from the actual marketplace, which rewards people like Yiannopoulos with speaking fees and book sales not for the quality of his ideas but for the appeal of his performance. Even Murray, whom I believe does his scholarship in good faith, would have to admit that iconoclasm drives his reputation and book sales more than the superior quality of his work as a social scientist (however we rate that quality). Ultimately, the “marketplace of ideas” is a confused argument that promises the triumph of good ideas while delivering ordinary and unproductive provocation.

#### Stop trying to convince racists to not be racist. The Trump era proves – the marketplace of ideas fail – 4 warrants.

**Niehoff ’16** (Len Niehoff is a professor at the University of Michigan Law School. Dec. 1, 2016 “The marketplace of ideas has crashed” <http://www.detroitnews.com/story/opinion/2016/12/01/marketplace-ideas/94692632/> | SP)

In a Supreme Court opinion written almost 100 years ago, Justice Oliver Wendell Holmes explained how freedom of speech contributes to our political process. Holmes argued that our democracy depends upon a “free trade in ideas.” This allows different views to compete and for the better ideas to prevail. As Holmes put it, “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” This “marketplace of ideas” theory has influenced political thought for decades. But it rests upon certain assumptions, all of which turned out to be wrong in 2016. One of those assumptions is that people will receive information in quantities they can manage. But this election cycle we have all been awash in more information and misinformation than a human being can process. Psychologists tell us that under these circumstances we do the easy thing: we focus on “information” that confirms what we already think. The marketplace of ideas theory also assumes that we will be able to sort reliable information from unreliable. But 2016 revealed that this also no longer holds true. Our inability to tell reliable from unreliable information gave both major party candidates license to play with the truth, so they did. Poltifact, which fact-checks statements made by political candidates, assessed 19 percent of President-elect Donald Trump’s evaluated statements as mostly false, 34 percent as false, and 17 percent as what it calls “pants on fire” false. The site evaluated 14 percent of Hillary Clinton’s statements as mostly false, 10 percent as false, and only 7 percent as “pants on fire” false. If this is right, and if the reportedly more truthful of our two major candidates was making false statements to us almost a third of the time, then we have a serious problem. Some commentators have gone so far as to suggest that we have now entered a "post-factual" or "post-truth" political stage in our country’s history. The marketplace of ideas theory also assumes that we care about the truth. But an election may have little to do with what is factually right or wrong. The 2016 election may be a case in point. It has been argued that, on both sides, this election had much more to do with feelings instead of facts. Finally, the marketplace of ideas theory assumes that all ideas will have a chance to compete. But in 2016 the barriers to entry into this market became obvious. We conducted three presidential debates without a moderator asking one question about climate change. Or consider this: an estimated 1.6 million American children are homeless, but we heard almost nothing about this national tragedy. Responsibility for addressing these problems begins with each of us. We need to expect better of ourselves and of everyone around us. We need to stop using easy labels like “politically correct” and “fascist” and the like. A label is not an argument. It is just lazy thinking, if it is thinking at all. Facts need to matter to us. We need to care about the truth and to invest the time and energy it takes to find it. And we need to do all of this with respect, civility, and the humble recognition that we might be wrong. Justice Holmes wrote that this “is an experiment, as all life is an experiment.” And so it is.

## AT: Protest

### Movement Deflation

#### The focus on errors of progressive movements only isolate minorities even more

Delgado and Stefancic 08 [Delgado, Richard. (university Professor, Seattle University School of Law, JD 1974 University of California, Berkeley) Jean Stefancic (Research Professor, Seattle University School of Law, 1989, University of San Francisco). “Four Observations About Hate Speech” Wake Forest Law Review. 2008.] NB

We mention the above not to highlight the indeterminacy of the debate or the way in which one can cite constitutional values on either side. We have done this elsewhere43 and believe that the party of multiculturalism has the better argument.44 Instead, we mention it to point out a feature that ought to have been obvious all along, but that we and most other commentators seem to have missed—namely, how the debate proceeds almost entirely between two groups of the progressive left: the ACLU and its followers, on the one hand, and minority groups, critical race theorists, and their allies on the other.45 The struggle, in short, proceeds between two sets of progressive activists46 who, in most respects, see the world in very similar terms, consuming attention and energy at the very time when the political right—which holds little affection for either of them—has been registering large gains.47 For example, while the ACLU has been laboring to convince minorities of the error of their ways, conservative power has been rolling back the right of privacy by opening citizens’ library records to official prying and insisting on the right to snoop on e-mail and telephone exchanges.48 At the same time, conservatives in government have carved out a broad sphere of governmental secrecy, greatly limiting the public’s access to information.49 These are, of course, areas close to a civil libertarian’s heart. By the same token, scholars like those writing for this symposium have been trying to convince the free-speech advocates of the error of their ways, while conservative judges and administrators have been steadily dismantling programs that lie close to the heart of civil rights advocates, including affirmative Two groups of moderate leftists have thus been energetically clashing while conservatives have been making steady inroads into programs both sets of leftists hold dear. This reality suggests that moderate leftists might wish to find some common ground and turn their attention to what their adversaries have been achieving at their expense. One could analogize the situation to one in which two dogs, one slightly larger than the other, are carrying on a ferocious snarl-fest in the middle of the street, feinting and lunging, making a tremendous racket, blissfully unaware that the dog catchers are coming to take them to the municipal shelter where they will be euthanized ten days later.54 It is possible that with a new administration, the conservative assault on civil liberties and civil rights will ease somewhat. But historical forces such as the war on terror55 and the new color-blind approach to race relations56 are likely to generate continuing pressure on the progressive agenda regardless of who is in power in Washington. The hate-speech adversaries (and we do not exclude ourselves) need to ponder the expenditure of energy that they have been making and whether a détente of some sort is in order.57

### Alt Causes

#### Alt causes to right to protest

**Erickson 4/2** [Amanda Erickson, "Americans’ right to protest is in grave danger under Trump, United Nations warns," Washington Post, 4/2/2017] AZ

The right to protest is fundamental to American democracy. The country was born, after all, out of decades of civil disobedience by people angry about taxation without representation. (In Washington, FWIW, we are still angry.) But according to United Nations human rights investigators, this very basic principle is under attack. Over the past few months, on the heels of a fresh wave of organizing by liberals, at least 19 states have introduced measures that would criminalize peaceful protest. In places such as Minnesota, Michigan and Iowa, Republican lawmakers have proposed laws that would stiffen penalties for demonstrators who block traffic. In North Dakota, GOP leaders are pushing a bill that would allow motorists to run over and kill agitators, as long as the crash was accidental. In Indiana, conservatives want to instruct police to use “any means necessary” to remove activists from a roadway. Opponents worry this could lead to more brutal police response. Colorado lawmakers are considering a big increase in penalties for environmental protesters. Activists who tamper with oil or gas equipment could be, under the measure, face felony charges and be punished with up to 18 months behind bars and a fine of up to $100,000. A bill pending in the Virginia state legislature would dramatically increase punishment for people who “unlawfully” assemble after “having been lawfully warned to disperse.” Those who do so could face a year in jail and a $2,500 fine. In Missouri, some lawmakers want to make it illegal to wear a robe, mask or disguise (remarkably, a hoodie would count) to a protest. Lawmakers in North Carolina want to make it a crime to heckle lawmakers. Taken together, the United Nations warns, these bills represent an “alarming and undemocratic” trend that could have a chilling effect on activism. “From the Black Lives Matter movement, to the environmental and Native American movements in opposition to the Dakota Access oil pipeline, and the Women’s Marches, individuals and organizations across (American) society have mobilized in peaceful protests,” Maina Kiai and David Kaye, independent U.N. experts on freedom of peaceful assembly, said in a statement. These bills would make that harder. “The trend also threatens to jeopardize one of the United States’ constitutional pillars: free speech,” the pair wrote. And the bills violate international human rights law, they said. Supporters of the measures argue that the laws are needed to maintain public safety. The experts, though, disagreed. “One person’s decision to resort to violence does not strip other protesters of their right to freedom of peaceful assembly,” Kaye and Kiai said.

### Protests High Now

#### Student activism and protests are at an all-time high. HERI 16 Higher Education Research Institute 16.

Higher Education Research Institute. “College students’ commitment to activism, political and civic engagement reach all-time highs”. UCLA Newsroom. February 10, 2016. <http://newsroom.ucla.edu/releases/college-students-commitment-to-activism-political-and-civic-engagement-reach-all-time-highs>.

Colleges and universities across the U.S. experienced an increase in student activism over the past year, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

#### Protests high – the aff isn't necessary

**Wong 15** [Alia Wong (associate editor at The Atlantic), "The Renaissance of Student Activism," The Atlantic, 5/21/2015] AZ

Maybe the campus protests seemed rather isolated at first. Dissatisfaction with the administration. Outrage over bad decisions. A student altercation gone bad. For example: The protest at Florida State University last fall, when students didn’t like the idea of having the Republican state politician John Thrasher as their school’s president and launched a campaign—#SlashThrasher—against his candidacy. Citing the lawmaker’s corporate ties, various groups staged demonstrations, including some who organized a march to the city center. Or the protest at the University of Michigan in September, when, amid frustrations over their football team’s losses, students rallied at the home of the school’s president to demand that he fire the athletic director. They had more on their minds than lost points: The director had neglected to remove the team’s quarterback from a football game after he suffered a serious head injury that was later diagnosed as a concussion. (The Florida students’ protest failed to change minds at FSU, but Michigan’s athletic director was quickly sent packing.) There was the confederate-flag fiasco at Bryn Mawr, which resulted in a mass demonstration by hundreds of students who, all dressed in black, called for an end to racism on the Pennsylvania campus. A week later, more than 350 students staged a similar protest further north, at New York’s Colgate University. That one—dubbed #CanYouHearUsNow—likewise aimed to to end bigotry among students and faculty; it was in part prompted by a series of racist Yik Yak posts. Just as has been happening in communities at large, campus protests against racism and bigotry—along with related types of discrimination—have become commonplace. Students at the University of Chicago hosted a #LiabilityoftheMind social-media campaign last November to raise awareness about institutional intolerance. A “Hands Up Don’t Shoot” walkout was staged the same month by hundreds of Seattle high-schoolers. Roughly 600 Tufts students lay down in the middle of traffic in December for four and a half hours—the amount of time Michael Brown’s body was left in the street after behind shot. Students at numerous other colleges did the same. Of course, there were other common themes, too. Early last fall, Emma Sulkowicz, then a student at Columbia, pledged to carry a mattress on campus daily to protest the school’s refusal to expel her alleged rapist. Soon, hundreds of her classmates joined her, as did those at 130 other college campuses nationwide, according to reports. Anti-rape demonstrations became a frequent occurrence as colleges across the country came under scrutiny for their handling of campus sexual-assault cases. There were walkouts and sit-ins, canceled speeches and banner campaigns. Last May, the U.S. Department of Education reported that it was investigating 55 colleges and universities for possible violations of Title IX. As of this January, the number had gone up to 94. Sulkowicz even carried her mattress—with the help of two classmates—across stage to get her diploma on Tuesday: These demonstrations were, and are, very far from isolated. “There’s a renaissance of political activism going on, and it exists on every major campus,” Harold Levy, a former chancellor of New York City’s public schools who now oversees the Jack Kent Cooke Foundation, recently told me. Levy attributed this resurgence in part to the growing inequality in educational opportunity in the country, which has contributed to great tensions between institutions and the public they’re supposed to serve; even protests that don’t explicitly focus on this cause, he said, are byproducts of this friction. It’s happening again—it’s like when we were here! It’s happening! Levy, 61, was quoting a recent remark made by a friend who’s a trustee at Cornell, Levy’s alma mater. “He’s in a position of authority now, and he didn’t know whether to celebrate it or to worry about it,” Levy said. “And of course the answer is both: You want kids to be politically active precisely because you want their engagement in the world, and you want to encourage them to be free thinkers.” But that activism also threatens the institutions’ control. This resurgence in campus activism necessarily a new phenomenon. After all, The New York Times wrote about “The New Student Activism” back in 2012, attributing the trend to the Occupy Movement. But observers say the activism that’s since proliferated has a different feel, and this new chapter could trigger significant shifts in the way things are run. At least 160 student protests took place in the U.S. over the course of the 2014 fall semester alone, according Angus Johnston, a history professor at the City University of New York who specializes in student activism. “There’s certainly something of a movement moment happening right now,” he said, pointing in part to the news media, which fuels activism by putting protests on the public’s radar. “The campus environment right now has, for the past couple of years, reminded me a lot of the early- to mid-60s moment, where there was a lot of stuff happening, a lot of energy—but also a tremendous amount of disillusionment and frustration with the way that things were going in the country as a whole and on the campuses themselves.” And this sentiment has been taking hold in other parts of the world, too: Thousands of students (and teachers) have been demonstrating in Chile this month in the name of education reform, including two students who were killed last week. For younger generations, Johnston added, the “belief that you can change the world [hasn’t been] beaten out of you yet.” Johnston runs a blog-ish website featuring a resource that’s oddly hard to find on the Internet today: a modern timeline of student protests, including color-coded maps illustrating the location and theme of these demonstrations. Perhaps unsurprisingly, the map (which has yet to be updated with data from the spring semester) reveals that most of the recent student uprisings during the fall of 2014 focused on racism and police violence, all but a few of them in the eastern half of the country. Many of these demonstrations used hashtags to mobilize, some of which are still in use today. Meanwhile, according to Johnston’s analysis, about half of the 160 protests were evenly split between two main themes: sexism/sexual assault and university governance/student rights. The remainder called for improvements to tuition and funding—about half of them at University of California schools.

### Protests Ruse

#### Protests are a ruse – they are a reactive form of politics that focuses purely on affect and cedes institutional politics.

**Srniceke 15** [Srnicek, PHD, and Williams, PhD Candidate , 15 (Nick, PhD IR @LSE, Alex, Inventing the Future: Postcapitalism and a world without work)

Today it appears that the greatest amount of effort is needed to achieve the smallest degree of change. Millions march against the Iraq War, yet it goes ahead as planned. Hundreds of thousands protest austerity, but unprecedented budget cuts continue. Repeated student protests, occupations and riots struggle against rises in tuition fees, but they continue their inexorable advance. Around the world, people set up protest camps and mobilise against economic inequality, but the gap between the rich and the poor keeps growing. From the alter-globalisation struggles of the late 1990s, through the antiwar and ecological coalitions of the early 2000s, and into the new student uprisings and Occupy movements since 2008, a common pattern emerges: resistance struggles rise rapidly, mobilise increasingly large numbers of people, and yet fade away only to be replaced by a renewed sense of apathy, melancholy and defeat. Despite the desires of millions for a better world, the effects of these movements prove minimal. A FUNNY THING HAPPENED ON THE WAY TO THE PROTEST Failure permeates this cycle of struggles, and as a result, many of the tactics on the contemporary left have taken on a ritualistic nature, laden with a heavy dose of fatalism. The dominant tactics - protesting, marching, occupying, and various other forms of direct action - have become part of a well established narrative, with the people and the police each playing their assigned roles. The limits of these actions are particularly visible in those brief moments when the script changes. As one activist puts it, of a protest at the 2001 Summit of the Americas: On April 20, the first day of the demonstrations, we marched in our thousands towards the fence, behind which 34 heads of state had gathered to hammer out a hemispheric trade deal. Under a hail of catapult-launched teddy bears, activists dressed in black quickly removed the fence’s supports with bolt cutters and pulled it down with grapples as onlookers cheered them on. For a brief moment, nothing stood between us and the convention centre. We scrambled atop the toppled fence, but for the most part we went no further, as if our intention all along had been simply to replace the state's chain-link and concrete barrier with a human one of our own making.1 We see here the symbolic and ritualistic nature of the actions, combined with the thrill of having done something - but with a deep uncertainty that appears at the first break with the expected narrative. The role of dutiful protestor had given these activists no indication of what to do when the barriers fell. Spectacular political confrontations like the Stop the War marches, the now-familiar melees against the G20 or World Trade Organization and the rousing scenes of democracy in Occupy Wall Street all give the appearance of being highly significant, as if something were genuinely at stake.2 Yet nothing changed, and long-term victories were traded for a simple registration of discontent. To outside observers, it is often not even clear what the movements want, beyond expressing a generalised discontent with the world. The contemporary protest has become a melange of wild and varied demands. The 2009 G20 summit in London, for instance, featured protestors marching for issues that spanned from grandiose anti-capitalist stipulations to modest goals centred on more local issues. When demands can be discerned at all, they usually fail to articulate anything substantial. They are often nothing more than empty slogans - as meaningful as calling for world peace. In more recent struggles, the very idea of making demands has been questioned. The Occupy movement infamously struggled to articulate meaningful goals, worried that anything too substantial would be divisive.5 And a broad range of student occupations across the Western world has taken up the mantra of ‘no demands’ under the misguided belief that demanding nothing is a radical act.4 When asked what the ultimate upshot of these actions has been, participants differ between admitting to a general sense of futility and pointing to the radicalisation of those who took part. If we look at protests today as an exercise in public awareness, they appear to have had mixed success at best. Their messages are mangled by an unsympathetic media smitten by images of property destruction - assuming that the media even acknowledges a form of contention that has become increasingly repetitive and boring. Some argue that, rather than trying to achieve a certain end, these movements, protests and occupations in fact exist only for their own sake.5 The aim in this case is to achieve a certain transformation of the participants, and create a space outside of the usual operations of power. While there is a degree of truth to this, things like protest camps tend to remain ephemeral, small-scale and ultimately unable to challenge the larger structures of the neoliberal economic system. This is politics transmuted into pastime - politics-as-drug experience, perhaps - rather than anything capable of transforming society. Such protests are registered only in the minds of their participants, bypassing any transformation of social structures. While these efforts at radicalisation and awareness-raising are undoubtedly important to some degree, there still remains the question of exactly when these sequences might pay off. Is there a point at which a critical mass of consciousness-raising will be ready for action? Protests can build connections, encourage hope and remind people of their power. Yet, beyond these transient feelings, politics still demands the exercise of that power, lest these affective bonds go to waste. If we will not act after one of the largest crises of capitalism, then when? The emphasis on the affective aspects of protests plays into a broader trend that has come to privilege the affective as the site of real politics. Bodily, emotional and visceral elements come to replace and stymie (rather than complement and enhance) more abstract analysis. The contemporary landscape of social media, for example, is littered with the bitter fallout from an endless torrent of outrage and anger. Given the individualism of current social media platforms - premised on the maintenance of an online identity - it is perhaps no surprise to see online ‘politics’ tend towards the selfpresentation of moral purity. We are more concerned to appear right than to think about the conditions of political change. Yet these daily outrages pass as rapidly as they emerge, and we are soon on to the next vitriolic crusade. In other places, public demonstrations of empathy with those suffering replace more finely tuned analysis, resulting in hasty or misplaced action - or none at all. While politics always has a relationship to emotion and sensation (to hope or anger, fear or outrage), when taken as the primary mode of politics, these impulses can lead to deeply perverse results. In a famous example, 1985's Live Aid raised huge amounts of money for famine relief through a combination of heartstring-tugging imagery and emotionally manipulative celebrity-led events. The sense of emergency demanded urgent action, at the expense of thought. Yet the money raised actually extended the civil war causing the famine, by allowing rebel militias to use the food aid to support themselves.6 While viewers at home felt comforted they were doing something rather than nothing, a dispassionate analysis revealed that they had in fact contributed to the problem. These unintended outcomes become even more pervasive as the targets of action grow larger and more abstract. If politics without passion leads to cold-hearted, bureaucratic technocracy, then passion bereft of analysis risks becoming a libidinally driven surrogate for effective action. Politics comes to be about feelings of personal empowerment, masking an absence of strategic gains. Perhaps most depressing, even when movements have some successes, they are in the context of overwhelming losses. Residents across the UK, for example, have successfully mobilised in particular cases to stop the closure of local hospitals. Yet these real successes are overwhelmed by larger plans to gut and privatise the National Health Service. Similarly, recent anti-fracking movements have been able to stop test drilling in various localities - but governments nevertheless continue to search for shale gas resources and provide support for companies to do so.7 In the United States, various movements to stop evictions in the wake of the housing crisis have made real gains in terms of keeping people in their homes.8 Yet the perpetrators of the subprime mortgage debacle continue to reap the profits, waves of foreclosures continue to sweep across the country, and rents continue to surge across the urban world. Small successes - useful, no doubt, for instilling a sense of hope - nevertheless wither in the face of overwhelming losses. Even the most optimistic activist falters in the face of struggles that continue to fail. In other cases, well-intentioned projects like Rolling Jubilee strive to escape the spell of neoliberal common sense.9 The ostensibly radical aim of crowdsourcing money to pay the debts of the underprivileged means buying into a system of voluntary charity and redistribution, as well as accepting the legitimacy of the debt in the first place. In this respect, the initiative is one among a larger group of projects that act simply as crisis responses to the faltering of state services. These are survival mechanisms, not a desirable vision for the future. What can we conclude from all of this? The recent cycle of struggles has to be identified as one of overarching failure, despite a multitude of smallscale successes and moments of large-scale mobilisation. The question that any analysis of the left today must grapple with is simply: What has gone wrong? It is undeniable that heightened repression by states and the increased power of corporations have played a significant role in weakening the power of the left. Still, it remains debatable whether the repression faced by workers, the precarity of the masses and the power of capitalists is any greater than it was in the late nineteenth century. Workers then were still struggling for basic rights, often against states more than willing to use lethal violence against them.10 But whereas that period saw mass mobilisation, general strikes, militant labour and radical women’s organisations all achieving real and lasting successes, today is defined by their absence. The recent weakness of the left cannot simply be chalked up to increased state and capitalist repression: an honest reckoning must accept that problems also lie within the left. One key problem is a widespread and uncritical acceptance of what we call ‘folk-political’ thinking.

### Dominant Viewpoint

#### The aff legitimates dominant viewpoints and changes no ones minds

Stanley Ingber, THE MARKETPLACE OF IDEAS: A LEGITIMIZING MYTH, Duke Law Review, February 1984 . EE

The marketplace of ideas is more myth than reality.235 In practice, communications flowing into the market largely reflect conventional political, economic, and social points of view. Many would-be speakers gain only severely restricted access to the market, and diversity of perspective is largely nonexistent. In reality, the marketplace is hardly the laissez-faire type of free market the model suggests. Some critics, explaining its continuing viability, have noted that the marketplace functions as a self-fulfilling prophecy.236 Despite the aforementioned flaws, to those who accept traditional values and conventional wisdom the market seems to be functioning successfully. Because dominant groups espousing established perspectives have relatively complete access to the market and find their views largely adopted by the public, they, unlike dissidents, do not perceive marketplace outcomes as predetermined, or as strongly influenced by socialization, access, or packaging. Because the perspectives that dominant groups think "best" are quite likely adopted, to those who adhere to dominant beliefs the marketplace does seem to reach the best result. Therefore, the marketplace model provides a dominant group with a basis for its self-serving belief that the dominance of its perspectives is justified.237 This byproduct of the market model might in turn explain the marketplace theory's persistence despite its serious and obvious malfunctions. Dissidents, who have experienced only restricted access to the marketplace, and little if any success in it, will of course not see the market process as arriving at the best perspectives. Marketplace theory is, in the minds of some dissidents, nothing but an ideological construct designed to deflate protest and delude the populace into believing that it, rather than an elite, controls its destiny.238 Such dissidents perceive stronger and more strident expressions or actions as necessary to overcome these market failures. Consequently, neither holders of dominant views nor dissidents need feel pressured to alter their views in light of market outcomes. Although some dissidents believe the marketplace inevitably is biased and thus should be rejected, others who believe that free expression preserves individuality continue to support marketplace imagery.239 This latter group stresses the need for marketplace reform, to assure equal access to all.24° Such cries for reform are, however, not limited to those uttered by dissidents.

### Student Participation

#### Freedoms aren’t applied equally – students of color aren’t a part of your demonstrations because of distrust

Fang 16 (Marina, reporter @ the Huffington Post, “Most College Students Want Free Speech On Campuses — But Not When It’s Hate Speech,” 04/04/2016, http://www.huffingtonpost.com/entry/free-speech-college-campuses-survey\_us\_5701c58ce4b0daf53aeff94e//]

The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. Students are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously. For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

## AT: Race

### Alt Right Low Now

#### Their uniqueness is wrong—white supremacist groups are being stifled by the work of college administrators and censorship

**Burley 16:** Burley, Shane Contributor, Waging Nonviolence “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” Waging Nonviolence. October 2016. RW

While the Alt Right is fighting for a platform, many on college campuses are taking the example of groups like the One People’s Project and are rallying community pressure to disallow Alt Right speakers regular access to collegiate forums. At DePaul University, Alt Right commentator and Gays for Trump founder Milo Yiannopoulos was brought by the College Republicans. Ahead of this, a petition began circulating, largely stemming out of the Black Student Union work, to push DePaul to do more about hate speech on campus. Protesters disrupted the event by getting on stage and prevented him from speaking, functionally ending it. The college later canceled Yiannopoulos’s second scheduled speech, citing his provocative rhetoric as the reason. Protesters later attempted to disrupt a debate-watching party where Trump student supporters had congregated to root for their candidate. Much of the work the Black Student Union has done at DePaul echoes the broad-based anti-racist work happening on campuses around the country, where organizations are confronting incidents of racism on campus that may get overlooked. A wave of this kind of action was sparked by the protests happening at the University of Missouri where the campus group Concerned Student 1950, named for the year that integration began at the university, put pressure on the president to resign after failing to address incidents of white supremacist intimidation. This has helped to present a model that is now confronting the growth of the Alt Right in campus settings, where the work to confront those groups is done in tandem with the larger goals of challenging systemic racism and violence. Movements like TAMU Anti-Racism at Texas A&M are following suit to pressure the administration to include explicitly anti-racist curriculum and to create penalties for racist discourse being seen from Alt Right organizations. When it comes to the crossover potential of the Donald Trump campaign, the reaction has been largely the same. After shutting down a Trump rally in Chicago on March 11, the intensity of demonstrations against Trump appearances have only escalated — from Albuquerque to San Jose to San Diego. In Portland, Oregon, Trump canceled two separate events in May and June, respectively, as venues proved difficult to find and the threat of protests loomed. In a recent appearance at the Xfinity Arena in Everett, Washington, Trump presented a kinder, gentler version of his law-and-order stance, insisting that people of color in the United States should support him before launching into his usual anti-immigration and economic-populist screeds. Speculation that he was entering into the general election on a more moderate platform dissipated, however, when he exchanged harsh words with Mexican President Enrique Peña Nieto, over the proposed extension of the U.S. border wall. On campuses there has essentially been a shift in conservative politics, with groups like the University of Connecticut’s Campus Republicans refusing to endorse Trump after saying he has empowered the voice of the Alt Right.

### Constitution Indict

#### The only constitutionally protected speech that universities restrict is hate speech regulated by speech codes- means that the only thing that the aff does is allow hate speech. Moore ‘16

Social Studies Research and Practice www.socstrp.org Volume 11 Number 1 112 Spring 2016 You Cannot Say That in American Schools: Attacks on the First Amendment James R. Moore Cleveland State University

**The first amendment**, a crucial component of American constitutional law, **is under attack from** various **groups** **advocating for censorship in universities** and public schools. The censors assert that restrictive speech codes preventing anyone from engaging in any expression deemed hateful, offensive, defamatory, insulting, or critical of sacred religious or political beliefs and values are necessary in a multicultural society. These speech codes restrict critical comments about race, religion, gender, sexual orientation, physical characteristics, and other traits in the name of tolerance, sensitivity, and respect. Many **hate speech codes are a violation of the first amendment** **and have been struck down** **by** federal and state **courts**. **They persist** in jurisdictions where they have been ruled unconstitutional; **most** universities and **public schools have speech** **codes**. This assault on the first amendment might be a concern to all citizens, especially university professors and social studies educators responsible for teaching students about the democratic ideals enshrined in our constitution. Teachers should resist unconstitutional speech codes and teach their students that the purpose of the first amendment is to protect radical, offensive, critical, and controversial speech. The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). The first amendment is the world’s oldest written safeguard for freedom of expression—this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy (Haynes et al., 2003). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). The Foundation for Individual Rights in Education (2013) found “**62% of universities** (254 out of 409 universities in the survey) **maintain** severely **restrictive** **red-light speech codes** – **policies that** clearly and **substantially prohibit protected speech**” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). Many hate **speech codes**, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools **are** often, albeit well-intended, **violations of the First Amendment** (Foundation for Individual Rights in Education; Haynes, 2013; *Saxe V. State College Area School District*, 2001).

### Dialogue Nonunique

#### Their solvency is nonunique- speech codes are not mutually exclusive with open dialogue

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal. the racist who is known is less dangerous than the one who is not.“ What tbe argument ignores is that there is a third alternative, namely the racist who is cured, or at least deterred by rules, policies, and official statements so as to no longer exhibit the behavior he or she once did. Since most conservatives believe that rules and penal- ties change conduct (indeed they are among the strongest proponents of heavy penalties for crime). the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded.“ Of course, the conservative may argue that regula- tion has costs of its own-something even the two of us would con- cede-but this is a different argument fi'om the bellwether one." A further neoconservative objection is that silencing the racist through legislation might deprive the campus community of the “town hall” opportunity it has to discuss and analyze issues of race when incidents of racism come to light.” But campuses could hold those meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, there will continue to be some number of incidents of racist speech and behavior. The difference is that now there will be the possibility of campus disciplinary hearings, which are even more likely to instigate the “town hall” discussions the argument assumes are desirable. Because the bellwether argument ignores that rules will have at least some edifying effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight

### Courts Check Brightline

#### Status quo courts check—things like context solves for crowding out speech that’s productive to solve structural violence

Arthur 11 (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> ]

A common objection to prosecuting hate speech is that it might endanger speech that counters hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

The impact is that it’s possible to check arbitrary methods of discourse

### AT: Line Drawing

#### No line drawing problem- you can’t threaten another person’s identity and it causes enduring emotional damage

**Class 4-14** [Jessenia Class, April 14, 2017, "Dissent: Harvard: Where Hate Speech is Welcome," No Publication, <http://www.thecrimson.com/article/2017/4/14/ramirez-class-dissent-open-campus/>] NB

We must make it clear that this back and forth is not an even fight. Equating a single individual’s opinion to the same level of importance as an individual’s identity is unacceptable. We cannot afford to “test” the limits of free speech. A very clear line already exists; you are welcome to your own opinion so long as your opinion [does not threaten](https://www.theatlantic.com/politics/archive/2015/03/the-limits-of-free-speech/387718/) another person’s existence. The line has been crossed here. Our intent is not to simply deafen ourselves to the perspectives of others that contradict our own; on the contrary—we welcome ideas that are constructive, productive, and foster meaningful conversation about objective issues to broaden our horizons. Yet, when these platforms are instead manipulated and abused to further proselytize a disregard for another’s identity, we cannot sit idle and allow such hateful rhetoric to stew. Through the creation of the Open Campus Initiative, it seems like we are moving backwards rather than moving forward. It enforces the notion that Harvard isn’t a home for everyone when a large portion of our student body cannot feel safe here. Allowing such speakers on campus gives a message that the well-being of marginalized students is of little importance. Some of our colleagues on the Editorial Board seem to believe it is acceptable for such a burden to be placed on students by expecting them to attend these events in order to push back against those triggering opinions. Students who are members of the communities that have or will come under attack by controversial speakers already face enough discrimination on a daily basis. Having to constantly defend one’s own identity and stand up for what’s right is absolutely draining. Having to constantly justify your own existence is exhausting. Is it asking too much to allow students to exist without constantly worrying about which speaker will be the next one to publicly invalidate their existence? Is it too much to ask that Harvard not be complicit in this charade?

## 1NC- Hate Speech

### 1NC

#### Harrassment decreasing on campus now- proves codes are effective

Sutton 16 Halley Sutton, Report shows crime on campus down across the country, Campus Security Report 13.4 (2016), 9/9/16,http://onlinelibrary.wiley.com/doi/10.1002/casr.30185/full //

A recent report released by the National Center for Education Statistics found an overall decrease in crimes at educational institutions across the country since 2001. The overall number of crimes reported by postsecondary institutions has dropped by 34 percent, from 41,600 per year in 2001 to 27,600 per year in 2013. The report, titled Indicators of School Crime and Safety: 2015, covers higher education campuses as well as K–12 schools and includes such topics as victimization, teacher injury, bullying and cyberbullying, use of drugs and alcohol, and criminal incidents at postsecondary institutions. The report found significant decreases in instances of bullying, harassment due to sexual orientation, and violent crime at all levels of education. The number of on-campus crimes reported at postsecondary institutions in 2013 was lower than in 2001 for every category except forcible sex offenses and murder.

#### Hate speech is constitutionally protected- the aff restricts it

**Moore 16** [Social Studies Research and Practice www.socstrp.org Volume 11 Number 1 112 Spring 2016 You Cannot Say That in American Schools: Attacks on the First Amendment James R. Moore Cleveland State University]

**The first amendment**, a crucial component of American constitutional law, **is under attack from** various **groups** **advocating for censorship in universities** and public schools. The censors assert that restrictive speech codes preventing anyone from engaging in any expression deemed hateful, offensive, defamatory, insulting, or critical of sacred religious or political beliefs and values are necessary in a multicultural society. These speech codes restrict critical comments about race, religion, gender, sexual orientation, physical characteristics, and other traits in the name of tolerance, sensitivity, and respect. Many **hate speech codes are a violation of the first amendment** **and have been struck down** **by** federal and state **courts**. **They persist** in jurisdictions where they have been ruled unconstitutional; **most** universities and **public schools have speech** **codes**. This assault on the first amendment might be a concern to all citizens, especially university professors and social studies educators responsible for teaching students about the democratic ideals enshrined in our constitution. Teachers should resist unconstitutional speech codes and teach their students that the purpose of the first amendment is to protect radical, offensive, critical, and controversial speech. The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). The first amendment is the world’s oldest written safeguard for freedom of expression—this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy (Haynes et al., 2003). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). The Foundation for Individual Rights in Education (2013) found “**62% of universities** (254 out of 409 universities in the survey) **maintain** severely **restrictive** **red-light speech codes** – **policies that** clearly and **substantially prohibit protected speech**” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). Many hate **speech codes**, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools **are** often, albeit well-intended, **violations of the First Amendment** (Foundation for Individual Rights in Education; Haynes, 2013; *Saxe V. State College Area School District*, 2001).

#### Speech codes solve – empirics and social studies.

**Gould ’10** (Jon B. Gould is a professor in the Department of Justice, Law and Society and at the Washington College of Law at American University, where he is also director of the Washington Institute for Public and International Affairs Research. 2010-02-15, University of Chicago Press, “Speak No Evil: The Triumph of Hate Speech Regulation” | SP)

Yet the very adoption of hate speech policies has influenced behavior on several campuses. This point was repeated to me by many administrators at the schools I visited, who reported the rise of a “culture of civility” that eschews, if not informally sanctions, hateful speech. “Don’t mistake symbolism for impotence,” they regularly reminded me. Symbols shape and reflect social meaning, providing cues to the community about the range of acceptable behavior. Adopting a hate speech policy, then, could have persuasive power even if it were rarely enforced. Consider the dean of students at a northeastern liberal arts college, who spoke proudly of her school’s hate speech policy. Had the policy been formally invoked, I asked. “Rarely,” she told me, but the measure “sets a standard on campus. It gives us something we can point our finger to in the catalog to remind students of the expectations and rights we all have in the community.” This sentiment was repeated by the president of a well-known institution, who claimed that “we didn’t set out to enforce the policy punitively but to use it as the basis for our educational efforts at respecting individuality.” Still another administrator admitted that, “while we’ve rarely used the policy formally, it does give support to students who believe their rights have been violated. They’ll come in for informal mediation and point to the policy as the reason for why the other person must stop harassing them.” Sociologists would call this process norm production— that symbolic measures can condition and order behavior without the actual implementation of punitive mechanisms. 8 Hate speech policies set an expected standard of behavior on campus; college officials employ orientation sessions, extracurricular programs, and campus dialogue to inculcate and spread the message; and over time an expectation begins to take root that hate speech is unacceptable and should be prohibited. Of course, this mechanism makes regulation a self-policing exercise— colleges need not take formal or punitive action— but the effect is to perpetuate a collective norm that sees hate speech as undesirable and worthy of prohibition. Moreover, considering the isomorphic tendencies of college administrators, the creation of speech policies— or speech norms— at respected and prestigious institutions has a “trickle down” effect throughout academe. Again, sociologists would call this process normative isomorphism, but most people know the phenomenon as “keeping up with the Joneses.” 9 If Harvard, Berkeley, or Brown passes measures against hate speech, then institutions lower in the academic food chain are likely to take note and follow suit. If prestigious institutions advance campus norms that eschew hate speech, then both peer and “wannabe” institutions are likely to consider and replicate such informal rules. Indeed, this is the very fear of FIRE and its compatriots— that if PC policies are not checked now, their message will spread throughout academe infecting other campuses. What FIRE fails to say, but undoubtedly must be thinking, is that informal law and mass constitutionalism are at stake if the spread of speech regulation is not curbed. FIRE can hang its hat on R.A.V., Doe, UWM Post, and the other court cases in which judges have overturned college hate speech policies, but as hate speech regulation continues to flourish on college campuses, informal speech norms are at stake throughout the larger bounds of civil society.Whatever one thinks of FIRE and its agenda, its supporters are like the oldfashioned fire brigade that excitedly shows up at a burning building only to toss paltry pails of water on the inferno. Hate speech regulation has already crossed the firebreak between academe and the rest of civil society and is well on its way toward acceptance in other influential institutions. The initial signs are found in surveys of incoming college freshmen. Shortly after R.A.V., researchers began asking new freshmen whether they believe that “colleges should prohibit racist/sexist speech on campus.” 10 In a 1993 survey, 58 percent of first-year students supported hate speech regulation, a number that has stayed steady and even grown a bit in the years following. By 1994, two thirds of incoming freshmen approved of hate speech prohibitions, with more recent results leveling off around 60 percent. 11 Unfortunately, there are not similar surveys before 1993 to compare these results against, but it is a safe bet that support would have been minimal through the mid-1980s when the issue had not yet achieved salience. More to the point, the surveys show that support for speech regulation is achieved before students ever set foot on campus. If, as the codes’ opponents claim, colleges are indoctrinating students in favor of speech regulation, the influence has reached beyond campus borders. New students are being socialized to this norm in society even before they attend college.

#### Speech codes are good– they diminish right-wing movements and form coalitions of targeted groups.

**Parekh 12** [Parekh, Bhikhu (2012) ‘Is There a Case for Banning Hate Speech?’, in Herz, M. and Molnar, P. (eds.) The Content and Context of Hate Speech: Rethinking Regulation and Responses. Cambridge: Cambridge University Press, pp. 37–56. ]

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups. When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their operations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advantage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### Turns the case and outweighs

#### 1. Magnitude- Hate speech normalizes psychological violence which renders educational spaces null and increases likelihood of physical violence

* Makes physical violence more likely—empirically proven
* Causes psychological harms
* Makes educational spaces null and void
* Normalizes oppressive practices
* Easy to reject from a position of privilege

**Heinze 14**: Eric Heinze, professor of law & humanities at Queen Mary university of London. March 31, 2014. Nineteen arguments for hate speech bans—and against them. Free Speech Debate. Free speech scholar Eric Heinze identifies the main arguments for laws restricting hate speech and says none are valid for mature Western democracies. <http://freespeechdebate.com/en/discuss/nineteen-arguments-for-hate-speech-bans-and-against-them/>. RW

On all sides of the debate, we can agree that speech is necessary for democracy. Governments ought not to abridge speech willy-nilly. They must show how the speech in question poses a genuine danger. In the case of hate speech, has any such menace been shown? In my book [Hate Speech and Democratic Citizenship](https://global.oup.com/academic/product/hate-speech-and-democratic-citizenship-9780198759027?cc=gb&lang=en&), I reject the classical liberal defences of free speech, let alone newer libertarian ones. I argue that the strongest case for free speech is grounded on specifically democratic principles, which must not be confused with Millian, liberal ones. I cannot reproduce that thesis here, but will briefly respond to some familiar claims raised by the bans’ advocates. 1. The ‘anti-absolutist’ argument: ‘No rights are absolute. Rights must be limited by respect for others, and by the needs of society as a whole. The British Lord Bhikhu Parekh writes, “Although free speech is an important value, it is not the only one. Human dignity, equality, freedom to live without harassment and intimidation, social harmony, mutual respect, and protection of one’s good name and honour are also central to the good life and deserve to be safeguarded. Because these values conflict, either inherently or in particular contexts, they need to be balanced.” There are, moreover, many regulations of speech to which no one objects, punishing, for example, commercial fraud, graffiti, or courtroom perjury. Hate speech bans are no different.’ The ‘not speech’ argument: ‘The crudest hate speech is not really speech at all. It is merely the kind of “inarticulate grunt” that can legitimately be banned because it forms, in the words of US Supreme Court Justice Anthony Kennedy, “no essential part of any exposition of ideas.”’ The ‘Weimar’ (or ‘snowball’) argument: ‘Democracy under the Weimar Republic or the former Yugoslavia show that too much free speech leads to atrocities. Some offensive remarks may, on the surface, appear harmless. But seemingly innocuous offences snowball into more pernicious forms. Once speech reaches a Nazi-like extreme, it becomes too late to avert the dangerous consequences.’ The ‘direct harm’ argument: ‘Hate speech can cause psychological harm, just as hate-motivated violence causes physical harm. Children who are called “nigger”, “Paki”, or “queer” suffer just as much as when they are physically bullied. For adults, verbal abuse can render workplace, educational or other environments unbearable.’ The ‘indirect harm’ argument: ‘The harms of hate speech do not manifest in a conventionally empirical sense. From some phenomenological and socio-linguistic perspectives, hateful expression is “illocutionary”, i.e. not merely denoting hatred but enacting discrimination, and “perlocutionary”, disseminating adverse psychological effects regardless of any materially evident impact. Anthony Cortese describes a “cultural transmission theory”, whereby cultures “pass hate on to each succeeding generation, making intolerance “normal or conventional.” Hate speech germinates intolerance, not through discrete, causally traceable chains of events, but through cumulative effects.’ The ‘hate crime’ argument: ‘The bans are necessary because hate speech is commonly connected to hate-based acts of murder, battery, rape, assault, and property theft or damage.’ The ‘disproportionate impact’ argument: ‘It’s easy for those in privileged positions to oppose hate speech bans. They do not bear the brunt of hatred. But “individual freedom” looks different from the viewpoint of historically vilified groups.’

#### Turns counterspeech- psychological violence hurts ability to participate in the movement

#### 2. Inclusivity- It causes less discursive participation from minorities which harms ability to reach the truth

**Horne 16**: Solveigh Horne, Minister of children and equality in Norway. “hate speech—a threat to freedom of speech.” March 8, 2016. Huffington Post. <http://www.huffingtonpost.com/solveig-horne/hate-speech--a-threat-to_b_9406596.html>. RW

Hate speech in the public sphere takes place online and offline, and affects young girls and boys, women and men. We also see hate speech attacking vulnerable groups like people with disabilities, LGBT-persons and other minority groups. Social media and the Internet have opened up for many new arenas for exchanging opinions. Freedom of speech is an absolute value in any democracy, both for the public and for the media. At the same time, opinions and debates challenge us as hate speech are spread widely and frequently on new platforms for publishing. Hate speech may cause fear and can be the reason why people withdraw from the public debate. The result being that important voices that should be heard in the public debate are silenced. We all benefit if we foster an environment where everybody is able to express their opinions without experiencing hate speech. In this matter we all have a responsibility. I am especially concerned about women and girls being silenced. Attempts to silence women in the public debate through hate speech, are an attack on women’s human rights. No one should be silenced or subjected to threats when expressing themselves in public. Women are under-represented in the media. In order to get a balanced public debate it is important that many voices are heard. We must encourage women and girls to be equal participants with men. Hate speech prevents women from making their voices heard. I also call upon the media to take responsibility in this matter. In some cases the media may provide a platform for hate speech. At the same time, I would like to stress that a liberal democracy like Norway strongly supports freedom of speech as a fundamental right.

## 2NC- Hate Speech

### 2NC- OV

#### The counterplan restricts hate speech through an objective method that doesn’t allow oppressive statements towards minorities- that’s McElwee.

#### Harrassment is decreasing now- this means that the status quo is improving so the aff doesn’t win a link turn because the status quo marginally gets better- that’s Sutton 16

#### Hate speech is constitutionally protected because of various interpretations of the first amendment and supreme court rulings- that’s Volokh and Moore 16

#### Speech codes are uniquely effective because empirically they have worked, they diminish right wing movements and they bring together marginalized groups- that’s Parekh 12

#### Now- impact analysis- it was concedd in the 1AR, and that means the DA is the highest impact layer, which also indicates that a risk of a link magnifies the impact and it outweighs the case. Don’t allow new 2AR responses or weighing because we don’t have a 3NR to respond to it

#### 2 Major warrants

#### 1. Magnitude- allowing hate speech creates a notion that it is a permissible form of discourse which increases the likelihood of individuals to carry out hate crimes and oppress minorities because they internalize this notion that they are the higher power

#### this outweighs the case benefits because it’s a materially evident impact

#### 2. Inclusivity- there is less discursive participation from the minorities which turns the aff at it's solvency layer because the majorities are the one's who benefit from contributing their ideas into the marketplace of free ideas—that's Horne

### HS O/W Legal Precedent

1. timeframe- hate speech happening now, we don't know when legal precedent will help
2. alt causes- there are a ton of other ways for precednets to have been established
3. scale- the law has never been particularly effective at protecting people that’s the aff’s evidence

### HS O/W Reverse Enforcement

1. scale- being silenced is not as bad as having psycolgocila trauma fro having bad things said to you.
2. Internal link- people who are psychologically hurt don’t feel the desire to speak out because they are afraid that they will get hurt
3. Scope- the amount of people silenced by speech codes are much smaller than the amount of people who are affected by hate speech, hate speech is normalized, but censorship gets more public outry- that's also their evidence.

### \*\*Uniqueness\*\*

### Alt Right High Now

#### We don’t need to win uniqueness for a linear disad- even if the alt right is energized right now and is increasing with the election of Trump- there is always the capability to create more violence and issues like the material harms of oppression can always get worse. Their uniqueness analysis only makes sense if the alt right being high now has already pushed us over the brink- but there isn’t a brink because this is a linear DA. Be very skeptical of the 2AR’s capability to spin rhetoric on this issue- this is a hard and fast rule- yes things might be bad now, but they can always get worse- that’s the DA

### Squo Regs Solve

#### <weigh with cards in the 1nc>

#### 1. Status quo courts check—things like context solves for crowding out speech that’s productive to solve structural violence

**Arthur 11** (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> ]

A common objection to prosecuting hate speech is that it might endanger speech that counters hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

#### 2. Even if there is an issue with some courts- that can’t be expanded to all courts- if it’s a federal law then it applies regardless – at worst their argument is very weak defense and can’t be applied nationally

#### 3. This is nonunique with the aff’s solvency- the very same courts that they criticize as being the flaw hamper the capability of their movements. The aff doesn’t make any institutional changes- institutional regulations occur in both worlds

### AT: Not Protected Under 1st Amendment

**1) Hate speech is different from your definition of fighting words. Fighting words are unconstitutional but hate speech is not.**

**Hate speech is closely connected to the Supreme Court’s category of fighting words – those expressions that by their very nature are likely to bring people to blows – but the two are not completely analogous. Under the 1969 Supreme Court case Brandenburg v. Ohio, direct incitement imminent of lawless action or speech likely to do so was found unconstitutional rather than mere advocacy of violence.42**

**2) Cross apply Volokh 15 which indicates that hate speech is protected from the first amendment. Prefer since a) it’s comparative as it addresses your argument about fighting words and b) it sites a supreme court example in which hate speech was found to be constitutional.**

### \*\*Link Level\*\*

### AT: CounterSpeech

#### 1.Counterspeech fails – multiple warrants.

**Maitri and Mcgowan ’12** (Ishani Maitra is Assistant Professor of Philosophy and Women's and Gender Studies at Rutgers University. language, feminist philosophy, and philosophy of law. Mary Kate McGowan is Professor of Philosophy at Wellesley College. She received her PhD from Princeton. She works in metaphysics, philosophy of language, feminism, and philosophy of law. September 2012. “Speech and Harm: Controversies Over Free Speech” <https://books.google.com/books?id=QHjC6lhVROAC&pg=PA144&lpg=PA144&dq=counter+speech+%2B+ineffective&source=bl&ots=HhzA2FzR5I&sig=x_PyzgR-xS8_m6xikBpTkiD-EOg&hl=en&sa=X&ved=0ahUKEwi9wLLb-ofTAhUEsVQKHeoyAGEQ6AEIUTAJ#v=onepage&q=counter%20speech%20%2B%20ineffective&f=false> | SP

Finally, one might be resistant to new legislation exactly because one does not believe that the proper remedy for harmﬁll speech lies with the law. Many, for example, believe that counter-speech is the proper remedy. There are several things to say in response to this. First, it is not at all clear that more speech is the proper remedy for harmful speech. After all, one of the consequences of harmful speech is to disable the speech of the addressee.38 Furthermore, the empirical evidence demonstrates that such counter-speech rarely, in fact, occurs and when it does it is ineffective.39 Second, it seems obviously correct for the law to prohibit ‘Whites Only’ signs and other forms of verbal discrimi- nation. Moreover, it seems plainly inadequate to expect counter-speech to remedy such verbal acts of discrimination. Since we are here targeting that subset of racist hate speech that does the same thing (as a ‘Whites Only’ sign), comparable legal treatment seems appropriate (at least in the absence of a persuasive argument to the contrary). Finally, in expecting counter—speech to remedy the harms of racist speech, it seems naive to think that people can be counted on to do the right thing. After all, all too often we don’t.

#### 2. C/A Horne 16- two implications

#### This outweighs:

#### A. Terminal defense against their impact- at worst, it is the same amount of violence whether it be psychological or physical

#### B. Magnitude- empirical studies verify that once you create a category for people that make them think that it is permissible to conduct certain actions, they are more likely to do it again

#### 3. they force the burden onto students and not every setting is as progressive as his examples- our evidence directly indicts theirs

**Delgado and Yun 96** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993 “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”. 1996. Arizona State Law Journal. <http://ssrn.com/abstract=2094597>. ] NB

Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works. We would just note two reservations. The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people \*1282 of color. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech-their favorite mechanism-seemingly has worked. The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one. In general, we believe that traditional defenders of free speech must beware of the tendency to light upon a single solution to a complex problem. The purpose of this essay is to explore a type of unitary or essentialist thinking that we find prevalent in First Amendment absolutist circles. Although we welcome Calleros' article, we think that it has overtones of this simplistic one-size-fits-all approach. It is in the hope that the future discussion of hate speech will someday exhibit the kind of nuance that we see in other areas of constitutional law, for example equal protection, that we write this essay.

#### 4. Their solvency is nonunique- speech codes are not mutually exclusive with open dialogue

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal. the racist who is known is less dangerous than the one who is not.“ What tbe argument ignores is that there is a third alternative, namely the racist who is cured, or at least deterred by rules, policies, and official statements so as to no longer exhibit the behavior he or she once did. Since most conservatives believe that rules and penal- ties change conduct (indeed they are among the strongest proponents of heavy penalties for crime). the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded.“ Of course, the conservative may argue that regula- tion has costs of its own-something even the two of us would con- cede-but this is a different argument fi'om the bellwether one." A further neoconservative objection is that silencing the racist through legislation might deprive the campus community of the “town hall” opportunity it has to discuss and analyze issues of race when incidents of racism come to light.” But campuses could hold those meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, there will continue to be some number of incidents of racist speech and behavior. The difference is that now there will be the possibility of campus disciplinary hearings, which are even more likely to instigate the “town hall” discussions the argument assumes are desirable. Because the bellwether argument ignores that rules will have at least some edifying effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

#### 5. Counterspeech comes from a place of privilege which ignores social contexts that people have been emotionally hurt- they are not in the place to consider a logical approach to their rights

#### 6. Counter-speech fails – hate speech makes the victim unable to respond and counter-speech can't convince the racist

**Auxier 14** [Adele Auxier (Juris Doctor candidate, Notre Dame Law School, 2007), "Tiptoeing through the Junkyard: Three Approaches to the Moral Dilemma of Racist Hate Speech," Notre Dame Journal of Law, Ethics & Public Policy, February 2014] AZ

Lawrence argued that counter-speech was particularly ineffective in the context of informal "assaultive" speech for two reasons. First, assaultive racist speech frequently produces (and is intended to produce) a visceral emotional response of shock, fear, and rage in the listener, which hinders their ability to respond verbally. Second, speech is perceived as an inadequate response to such a total attack on one's identity. Lawrence saw these verbal assaults as a kind of "preemptive" strike designed to silence and dehumanize the victim. Finally, Lawrence reminded his hearers that the "interest in the free flow of ideas" was not as compelling for all speakers. The First Amendment's speech protections did not originally extend to blacks at all.7 ' The "free marketplace" of ideas in America has contained quite a bit of racist speech, and sometimes defenders of free speech have attacked those who publicly oppose racist incidents for trying to "silence speech." 75 Lawrence says that this criticism misses the point that blacks and other historic victims of discrimination make about racism and racist speech-namely, that one of the main goals and effects of racist ideologies is to silence speech by members of disfavored groups.76

#### 7. Analytical reasons individuals can’t respond to hate speech.

**Nielsen ’09** (Nielsen, Laura Beth, Laura Beth Nielsen is professor of sociology at Northwestern University and research professor at the American Bar Foundation. She is the author of License to Harass. “License to Harass,” edited by Laura Beth Nielsen, Princeton University Press, 2009. ProQuest Ebook Central, http://hh7kl7za7m.search.serialssolutions.com/?ctx\_ver=Z39.88-2004&ctx\_enc=info%3Aofi%2Fenc%3AUTF-8&rfr\_id=info%3Asid%2Fsummon.serialssolutions.com&rft\_val\_fmt=info%3Aofi%2Ffmt%3Akev%3Amtx%3Abook&rft.genre=book&rft.title=License+to+Harass+%3A+Law%2C+Hierarchy%2C+and+Offensive+Public+Speech&rft.au=Nielsen%2C+Laura+Beth&rft.date=2009-01-10&rft.pub=Princeton+University+Press&rft.isbn=9780691126104&rft.externalDBID=n%2Fa&rft.externalDocID=445522&paramdict=en-US| SP)

The law’s story as to why legal intervention in such interactions is improper centers on allowing speakers’ freedom; the remedy for the offended target, according to conventional First Amendment theory/ doctrine, is “more speech” in the face of racist or sexist remarks from strangers. In a famous dissenting opinion, Justice Oliver Wendell Holmes first elaborated the “free trade in ideas” (Abrams v. U.S. 1919). Holmes said, “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” Relying on the metaphor of the free marketplace, the jurisprudential answer to offensive speech is more speech. Although there are notable exceptions (Delgado and Stefanic 1994; MacKinnon 1993; Matsuda, Lawrence, Delgado, and Crenshaw 1993; Meiklejohn 1948), many legal scholars advocate unfettered free speech, claiming that individuals who are offended or harmed by speech can (and should) counter these bad effects with various kinds of “more speech” (Abel 1998; Chevigny 1988; Post 1990). But what kind of more speech? What speech effectively counters the “truth” of a racial epithet or sexual slur? And how realistic is it to expect the target to engage the speaker? In some contexts, more speech may be just what is called for. Organized counterspeech is documented and advocated as a remedy in the face of organized racist hate speech, as when the Nazis march through Skokie (Abel 1998; Downs 1985). In this organized, policed environment, counterspeech may be effective and safe. But what of the victim of individual, targeted hate speech in public? The “more speech” solution to problems associated with racist speech has been criticized by a number of scholars on various grounds. First, the original speech is said to be “silencing,” meaning that the target/ potential responder is overwhelmed so that she cannot engage in effective counterspeech (MacKinnon 1993; Matsuda, Lawrence, Delgado, and Crenshaw 1993). The “more speech” solution also is criticized because it places on members of traditionally disadvantaged groups the burden of rectifying a socially undesirable set of thoughts or actions—a burden we carry with us every time we step out of our homes (Lederer and Delgado 1995a). Finally, the “more speech” solution is criticized as impractical; the threat of violence makes it unlikely that anyone—even the bravest—will confront a racist with conviction so deeply held that s/he is willing to violate all social norms and address a stranger in public (Goffman 1971), using a racial epithet. In what follows, I empirically examine the possibility of “more speech” in the context of these interactions—face-to-face encounters in public places involving racist or sexist hate speech. These empirical data are a starting point for understanding whether the theoretical debates in which legal scholars engage accurately reflect what happens in everyday interactions

#### 8. Counterspeech doesn’t happen – empirics prove.

**Nielsen ’09** (Nielsen, Laura Beth, Laura Beth Nielsen is professor of sociology at Northwestern University and research professor at the American Bar Foundation. She is the author of License to Harass. “License to Harass,” edited by Laura Beth Nielsen, Princeton University Press, 2009. ProQuest Ebook Central, http://hh7kl7za7m.search.serialssolutions.com/?ctx\_ver=Z39.88-2004&ctx\_enc=info%3Aofi%2Fenc%3AUTF-8&rfr\_id=info%3Asid%2Fsummon.serialssolutions.com&rft\_val\_fmt=info%3Aofi%2Ffmt%3Akev%3Amtx%3Abook&rft.genre=book&rft.title=License+to+Harass+%3A+Law%2C+Hierarchy%2C+and+Offensive+Public+Speech&rft.au=Nielsen%2C+Laura+Beth&rft.date=2009-01-10&rft.pub=Princeton+University+Press&rft.isbn=9780691126104&rft.externalDBID=n%2Fa&rft.externalDocID=445522&paramdict=en-US| SP)

Reactions and responses to racist and sexist street speech are the product of a complicated calculus made by the target of such speech. Some reactions are overt forms of resistance and convey a message to the speaker and everyone else who witnesses such interactions. Far more common, however, is for targets to have a hidden response or to ignore the speech altogether. One interpretation is that targets of racist and sexist speech effectively and consistently respond with authority to those making the comments. Some First Amendment scholars whose model for combating racist and sexist speech with “more speech” may take heart in these results, claiming that they are evidence that simply allowing more speech is effective. Those who really are bothered by such speech will respond. This interpretation, however, ignores the silencing that such speech engenders in many of its targets. All targets, whether they reported responding to such speech or not, said that they weighed their options very carefully when deciding how to respond, and the most important factor that determined their response was their own safety in the situation. Just as some critical race scholars claim, these comments engender fear for physical safety (Delgado 1993). Since women are more likely to fear for their physical safety when they are made targets of sexually suggestive speech than are men when they are targets, “more speech” disproportionately burdens women by requiring that they place their safety in jeopardy more often than men. This is in addition to the burden placed by the “more speech” idea in the first instance. A second interpretation of these data is that there is very little resistance on the part of the targets. With some exceptions, targets mainly allow such comments to stand uncontested and leave the situation without engaging in counterspeech. By failing to contradict such comments, the targets of offensive public speech might be accused of tacitly participating in their own subordination. This interpretation belies the complicated processes that underlie targets’ decisions about protesting such comments. These data show that targets are inclined to respond but often are precluded from doing so because they fear for their safety. Targets’ options are limited. Racist and sexist speech are interesting sites for the study of power relations because they represent apparent and blatant invocation of power by one individual over another. The power of racism and sex-ism, while firmly socially entrenched, is contested in various ways, however. All power relationships involve contests between the suborddinate group and the powerful, but racism and sexism are unique in that there is growing recognition that racism and sexism are illegitimate axes of subordination, even by some members of the privileged group. Racist and sexist speech between strangers in public places violates social norms. This translates into permission to challenge racist and sexist speech in public places, but this can be done only when it is safe to do so. And, it is more common to challenge racist remarks than to challenge sexist remarks. This may be due to women’s physical vulnerability, but it also may be due to the ambivalence about sexually suggestive speech. Some people consider at least mild forms of sexually suggestive speech acceptable. These also are interesting moments in which to examine power relations because the relationships are transitory. But the hierarchies the interactions reinforce are not. Those who engage in active forms of resistance may be doing something serious to combat racism and sexism by managing to “redefine positively their general social position relative to the dominant group” (McCann and March 1996, p. 221). Active resistance occurs by making such interactions known—making people who are members of privileged classes know that they happen and happen with some regularity—by talking back in the moment (loud enough for others to over-hear) or by talking about them publicly as great injustices. But these acts of resistance are rare. Only certain (i.e., more often whites and more often men) members of the dominated group have the luxury of engaging in overt mechanisms of resistance. Even they are more likely to choose not to do so. We are left with a phenomenon that occurs often. In its racist and sexist form, it is a phenomenon that most people regard as a serious social problem. It is a problem most people think the law should not attempt to correct. Many people, including targets, think it should be dealt with through self-help. Yet when we investigate what actually happens in response to offensive public speech, targets tell us they usually do nothing. While begging is controlled through the deployment of official and informal mechanisms, sexist and racist public speech goes largely unchecked by formal or informal means

### AT: Pressure Valve

[Them talking now, lets out their racist pressure so it decreases in the future]

#### 1. The psychological violence of hate speech makes oppressors more likely to strike again and increases stigmatization which normalizes violence. The aggressor’s pressure valve doesn’t stop leaking.

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5>] NB

The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities.50 Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later. Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases,rather than decreases, the chance that he or she will do so again in the future. 2 Moreover, others may believe it is permissible to follow suit. 3 Human beings are not mechanical objects. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. In particular, we use symbols to construct our social world, a world that contains categories and expecta- tions for "black," "woman," "child," "criminal," "wartime enemy," and so on.5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. But social sci- ence experiments demonstrate that the way we categorize others affects our treatment of them. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously. 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions.59 At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe.6" The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well con- tinue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize- what we do teaches others that they may do likewise. Pressure valves may be safer after letting off steam; human beings are not.

#### This outweighs:

#### A. Terminal defense against their impact- at worst, it is the same amount of violence whether it be psychological or physical

#### B. Magnitude- empirical studies verify that once you create a category for people that make them think that it is permissible to conduct certain actions, they are more likely to do it again

### AT: Reverse Enforcement

[Black people will get arrested more/speech codes will be used against black people]

#### 1. Minorities commit less hate crimes against whites, they are not civil or criminal violations- they are in defense

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5>] NB

**A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves**.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses.**62But the empirical evidence does not suggest that this is the pattern**, much less the rule. **Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse**. 63 **Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.'** Moreover, **the distribution of enforcement seems to be consistent with commission of the offense**. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, **the reverse-enforcement objection seems to have little validity** in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive coun- tries.67 **The likelihood that officials** in the United States would **turn hate speech laws** into weapons against **minorities seems remote.**

#### This outweighs- it takes into account empirical factors which their predictive evidence can’t- our evidence is more aligned with the real world

#### 2. Context solves for crowding out speech- it’s more productive

**Arthur 11** (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> //

A common objection to prosecuting hate speech is that it might endanger speech that counters hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

### AT: FS Helps Minorities

#### 1. Empirically denied- Free speech has not served as a catalyst for change- empirics

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5>] NB

Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did. 8 Other reform movements also are said to have relied heavily on free speech.6 9 This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment.70 The original Constitution protected slavery in several of its provisions,7 1 and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. 72 Later, of course, abolitionism and civil rights activism broke out. But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights movement of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them.7 4 They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted.75 Their speech was seen as too forceful, too disruptive. Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. But the First Amendment, as then understood, served more as an obstacle than a friend.76 Why does this happen? Narrative theory shows that we interpret new stories in terms of the old ones we have internalized and now use to judge reality.7 7 When new stories deviate too drastically from those that form our current understanding, we denounce them as false and dangerous. The free market of ideas is useful mainly for solving small, clearly bounded dis- putes.78 History shows it has proven much less useful for redressing sys- temic evils, such as racism. 79 Language requires an interpretive paradigm, a set of shared meanings that a group agrees to attach to words and terms.8 0 If racism is deeply inscribed in that paradigm-woven into a thousand scripts, stories, and roles-one cannot speak out against it without appear- ing incoherent. t An examination of the current landscape of First Amendment excep- tions reveals a similar pattern. Our system has carved out or tolerated doz- ens of "exceptions" to the free speech principle: conspiracy; libel; copyright; plagiarism; official secrets; misleading advertising; words of threat; disrespectful words uttered to a judge, teacher, or other authority figure; and many more. 2 These exceptions (each responding to some inter- est of a powerful group)83 seem familiar and acceptable, as indeed perhaps they are. But a proposal for a new exception to protect some of the most defenseless members of society, 18-year old black undergraduates at predominantly white campuses, immediately produces consternation: the First Amendment must be a seamless web. It is we, however, who are caught in a web, the web of the familiar. The First Amendment seems to us useful and valuable. It reflects our inter- ests and sense of the world. It allows us to make certain distinctions, toler- ates certain exceptions, and functions in a particular way we assume will be equally valuable for others. But the history of the First Amendment, as well as the current landscape of doctrinal exceptions, shows that it is far more valuable to the majority than to the minority, far more useful for confining change than for propelling it.8"

#### 2. Talking back immediately triggers a strong backlash- administrative containment is necessary to make sure that racists don’t continue their violence- otherwise they feel empowered

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5>] NB

How valid is this argument? Like many paternalistic arguments, it is offered blandly, virtually as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and therefore believe themselves able to make things so merely by asserting them as true.90 They rarely offer empirical proof of their claims, because none is needed. The social world is as they say because it is their world: they created it that way.91 In reality, those who hurl racial epithets do so because they feel empowered to do so.92 Indeed, their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous, as calling for a forceful response. Often racist remarks are delivered in several-on-one situ- ations, in which responding in kind is foolhardy.93 Many highly publicized cases of racial homicide began in just this fashion. A group began badger- ing a black person. The black person talked back, and paid with his life.94 Other racist remarks are delivered in a cowardly fashion, by means of graf- fiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door.95 In these situations, more speech is, of course, impossible. Racist speech is rarely a mistake, rarely something that could be cor- rected or countered by discussion. What would be the answer to "Nigger, go back to Africa. You don't belong at the University"? "Sir, you miscon- ceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future"? 96 The idea that talking back is safe for the victim or potentially educa- tive for the racist simply does not correspond with reality. It ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human commu- nity as an invitation for discussion. Even when successful, talking back is a burden. Why should minority undergraduates, already charged with their own education, be responsible constantly for educating others?

### AT: Regs Waste Resources

#### Ignoring minorities and sayng that regulation is a waste of time is a way of preserving power relations

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

But is it so clear that efforts to control hate speech are a waste of time and resources, at least compared to other problems that the campaigners could be addressing? What neoconservative writers may fail to realize is that eliminating hate speech goes hand in hand with reducing what they term “real racism.” Certainly, being the victim of hate speech is a less serious affront than being denied a job, a house, or an education. It is, however, equally true that a society that speaks and thinks of minorities derisively is fostering an environment in which such discrimination will occur frequently. This is so for two reasons. First, hate speech, in combination with an entire panoply of media imagery, constructs and reinforces a picture of minorities in the public mind.“ This picture or stereotype varies from era to era, but is rarely positive: persons of color are happy and carefree, lascivious, criminal, devious, treacherous, untrustworthy, immoral, of lower intelligence than whites, and so on." This stereotype guides action, accounting for much misery in the lives of persons of color. Examples include motorists who fail to stop to aid a stranded black driver, police officers who hassle African- American youths innocently walking or speaking to each other on the streets, or landlords who act on hunches or unarticulated feelings in renting an apartment to a white over an equally or more qualified black or Mexican. Once the stage is set-once persons of color are rendered one-down in the minds of hundreds of actors-the selection of minorities as victims of what even the toughlove crowd would recognize as real discrimination increases in frequency and severity. It also acquires its capacity to sting. A white motorist who suffers an epithet (“goddam college kidl") may be momentarily stunned. But the epithet does not call upon an entire cultural legacy the way a racial epithet does, nor deny the victim her status and personhood.” A second reason why even neoconservatives ought to pause before throwing their weight against hate-speech rules has to do with the nature of latter-day racism.” Most neoconservatives, like many white people, think that acts of out-and-out discrimination are rare today. The racism that remains is subtle, “institutional,” or “latter- day.”‘° It lies in the arena of unarticulated feelings, practices, and patterns of behavior (like promotions policy) on the part of institu- tions as well as individuals. A forthright focus on speech and lan- guage may be one of the few means of addressing and curing this kind of racism. Thought and language are inextricably connected.“ A speaker who is asked to reconsider his or her use of language may begin to reflect on the way he or she thinks about a subject. Words, external manifestations of thought, supply a window into the uncon- scious. Our choice of word, metaphor, or image gives signs of the attitudes we have about a person or subject.“ No readier or more effective tool than a focus on language exists to deal with subtle or lattenday racism. Since neoconservatives are among the prime pro- ponents of the notion that this form of racism is the only (or the main) one that remains, they should think carefully before taking a stand in opposition to measures that might make inroads into it. Of course, speech codes would not reach every form of demeaning speech or depiction. But a tool's unsuitability to redress every aspect of a prob- lem is surely no reason for refusing to employ it where it is effective.

### AT: Authority Dependence Victimizes

#### it’s simply another avenue of recourse to deter harmful speech which impact outweighs and represents a way of directly taking action

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

A fourth argument many neoconservative critics of hate-speech regulations make is that prohibitions against verbal abuse are unwise because they encourage minorities to see themselves as victims. Instead of rushing to the authorities every time they hear something that wounds their feelings, persons from minority groups ought to learn to speak back or ignore the ofi‘ending behavior. A system of rules and complaints reinforces in their minds that they are weak and in need of protection, that their lot in life is to be victimized rather than to make use of those opportunities that are available to them. Carter, for example, writes that anti-hate speech rules cater to “those whose backgrounds of oppression make them especially sensitive to the threatening nuances that lurk behind racist sentiment.”“ Lively warns that the rules reinforce a system of “supplication and self- abasement’?‘ D’Souza that they distort and prevent interracial friendships and encourage a “crybaby” attitude;“ Gates that they reinforce a “therapeutic" mentality and an unhealthy preoccupation with feelings." Would putting into place hate-speech rules induce passivity and a victim mentality among minority populations? This seems unlikely, among other reasons because other alternatives will remain as before. No African American or lesbian student is required to make a complaint when targeted by vicious verbal abuse. He or she can talk back or ignore it if he or she sees fit. Hate-speech rules sim- ply provide an additional avenue of recourse to those who wish to take advantage of them. Indeed, one could argue that filing a complaint constitutes one way of taking charge of one’s destiny: One is active, instead of passively “lumping it” when verbal abuse strikes. It is worth noting that we do not make the “victimization” charge in con- nection with other offenses that we suffer, such as having a car stolen or a house burglarized, nor do we encourage those victimized in this fashion to “rise above it” or talk back to their victimizer. If we see recourse differentb' in the two sets of situations it may be because we secretly behave that a black who is called “nigger” by a group of whites is in reality not a victim. If so, it would make sense to encour- age him not to dwell on or sulk over the event. But this is different from saying that filing a complaint deepens victimization; moreover, many studies have shown it simply is untrue.“ Racist speech is the harm. Filing a complaint is not. There is no empirical evidence that filing a civil rights complaint causes otherwise innocuous behavior to acquire the capacity to harm the complainant.

### AT: Censorship Bad

#### 1. It’s fine to regulate hate speech that has no potential to radicalize

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

Our response to the two wrongs argument is elaborated in greater detail in the next section, but one aspect of it is worth men- tioning now. The term “censorship” is appropriately attached to regu- lation by which the heavy hand of government falls on weaker, un- popular private speakers, or else on political dissidents who are at- tempting to criticize or change government itself)0 But with hate- speech regulation, few of the concerns that underlie our aversion to censorship are present. Hate-speakers are not criticizing government, but someone weaker than themselves. In prohibiting it, universities are not attempting to insulate themselves from criticism; the political- process concerns over governmental self-perpetuation are not present. The speech being punished is far from the core of political expres- sion-it carries few ideas at all except “I hate and reject your person- hood."“ Indeed, hate speech silences the victim and drives him away." Thus, when the government regulates hate speech, it en- hances and adds to the potential social dialogue, rather than sub- tracts from it.“ The next section explains how neoconservatives shrink from differences such as these, even though they are relatively obvious, in large part because they threaten a key element of the conservative faith, the level playing field.

2. **Cross apply Parkeh 12 – Two warrants take out your arg for why those who are censored are seen as martyrs**

**a) the amount of hate speech goes down since most people don’t want to be associated with them so we still solve for the majority of hate speech and b) they’re also driven underground so no publicity for the martyrs**

### AT: Slippery Slope- Lose Other FS

#### 1. Lack of empirical support

**Delgado and Yun 96** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993 “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”. 1996. Arizona State Law Journal. <http://ssrn.com/abstract=2094597>. ] NB

If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. [FN46] A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda, [FN47] in many cases to comply with international treaties and conventions requiring such action. [FN48] Many of these countries traditionally respect free speech at least as much as the United States does. [FN49] No such nation has reported any erosion of the atmosphere of free speech or debate. [FN50] At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, [FN51] hounded Hollywood writers out of the country, [FN52] and harassed and badgered such civil rights leaders as Josephine Baker, [FN53] Paul Robeson, [FN54] and W. E. B. DuBois [FN55] in a campaign of personal and professional smears that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” [FN56] Controversial artists are denied federal funding. [FN57] Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. [FN58] If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. [FN59] Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. [FN60] If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.

#### 2. The core-periphyery argument doesn't apply in this instance

**Delgado and Yun 96** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993 “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”. 1996. Arizona State Law Journal. <http://ssrn.com/abstract=2094597>. ] NB

A second reason why we ought to distrust the core-periphery argument is that it rests on a paradoxical metaphor that its proponents rarely if ever explain or justify. [FN61] Suppose, for example, that one were in the business of supplying electricity to a region. One has competitors-private utility companies, suppliers of gas heaters, and so on. Ninety-nine percent of one's business consists of supplying electricity to homes and businesses, but the business also supplies a small amount of electricity to teenagers to recharge the batteries of their Walkmans. It would surely be a strange business decision to focus all or much of one's advertising campaign on the much smaller account. Or, take a more legal example. Protecting human security is surely a core value for the police. Yet, it would be a peculiar distribution of police services if a police chief were to reason: human life is the core value which we aim to protect; therefore, we will devote the largest proportion of our resources toward apprehending shoplifters and loiterers. \*1292 There are situations in which the core-periphery argument does make sense. Providing military defense of a territory may be one; ecology, where protecting lizards may be necessary in order to protect hawks, may be another. But ordinarily, the suggestion that to protect a value or thing at its most extreme reaches is necessary in order to protect it at its core requires, at the very least, an explanation or some offer of a connection. Yet, defenders of hate speech who deploy this argument have not provided one. [FN62] And, in the meantime, a weak argument does great harm. It treats in grand, exalted terms the harm of suppressing racist speech, drawing illegitimate support from the broad social justification-social dialogue among citizens. [FN63] In contrast, the harm to hate speech's victims, out on the periphery, is treated atomistically, as though it were an isolated event, a one-time-only affront to feelings. [FN64] An injury characterized in act utilitarian terms obviously cannot trump an interest couched in rule utilitarian ones. [FN65] The Nazi, for example, derives a halo effect from other quite legitimate and valuable cases of speech, while the black is seen as a lone, quirky grievant with hypersensitive feelings. [FN66] But, in reality, hate speech is part of a concerted set of headwinds, including many other cases of hate speech, that a particular African-American victim will experience over the course of his or her life. [FN67] If we are willing to defend speech in broad social terms, we should be able to consider systemic, concerted harms as well. The “speech we hate” argument draws plausibility only by ignoring this asymmetry: it draws on a social good to justify an evil deemed only individual, but which in fact is concerted and society-wide. The unfairness of collapsing the periphery and the center as absolutists do would be made clear if we rendered the argument: “We protect the speech they hate in order to protect that which we love.” But not only is the argument unfair in this sense, it ignores what makes hate speech peripheral as speech in the first place. Face to face hate speech-slurs, insults, put-downs, and epithets-are \*1293 not referential. The recipient learns nothing new about himself or herself. [FN68] Rather, the speech elements are more like performatives, relocating the speaker and victim in social reality. Hate speech is not about the real, but the hyperreal; a Willie Horton ad is like an ad about jeans that makes no factual claim but merely shows a woman and a car. [FN69]

#### 3. Turn- hate speech codes demonstrate that governments are committed to the well-being of minorities. Overreach has been empirically disproven.

**Tsesis 5**[Alexander Tsesis – Visiting Professor, University of Pittsburgh Law School; Visiting Assistant Professor, Chicago-Kent College of Law; Affiliated Scholar with the University of Wisconsin-Law School at the Institute for Legal Studies, “Review: The Boundaries of Free Speech: Understanding Words that Wound”, “International Context” ]

Numerous democracies have recognized the potential harms of hate speech on children and on democratic society as a whole. [n110](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n110) In chapter 12, Delgado and Stefancic compare the United States' treatment of hate speech with the regulation of such speech in other Western societies, and they show the relatively greater acceptance of such regulation in international agreements. Germany, which is one of the countries they discuss, has several laws to prevent both the long- and short-term risks of destructive messages. Anyone attacking the human dignity of others by inciting hatred against a segment of the population, advocating the use of "violent or arbitrary measures against them," or exposing them to malicious slander is subject to imprisonment. [n111](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n111) Germany, further, punishes Holocaust denial and prohibits Nazi and neo-Nazi groups from using the Internet to disseminate their ideology. [n112](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n112) Germany counterbalances the government's interest in regulating hate speech for preserving democratic institutions with an interest in protecting the free speech rights of individuals. [n113](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n113) Despite its open polity, Germany outlaws political parties that threaten democratic order. [n114](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n114) Israel, too, has a law barring political candidates from national  [\*159] office who incite others to racism. [n115](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n115) Similarly, Canada prohibits hate speech that subverts the democratic process. [n116](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n116) British law, likewise, punishes those who incite others to racial hatred. [n117](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n117) Great Britain recognizes that tolerance of speech that calls for the abuse of racial, ethnic, and religious groups can popularize racist attitudes and increase inter-group friction. [n118](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true#n118) Countries that have adopted hate speech legislation show a concern for the well-being of targeted groups. They recognize that the decision over whether to regulate speech requires governments to balance individual with social interests. Many countries that restrict hate speech, as Delgado and Stefancic point out, "believe that human rights and freedoms contain a collective, as well as an individual, dimension and that a citizen's right to promote racist views must be weighed against the interests of society." [n119](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n119) In this regard, the Austrian Penal Code places a greater emphasis on the dignity rights of the targets than the rights of intimidating hate speakers. Section 283 of the Austrian Penal Code makes it an offence to incite hostilities against religious, racial, ethnic, or national groups and to violate "their human dignity" through slander. [n120](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n120) Countries like Austria that have anti-hate speech laws "wish to deter the violence and fighting they believe it encourages." [n121](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n121) Such is also the case in Hungary, where Parliament passed a law criminalizing the organizing or providing of finances for any event which may provoke violence against a national, ethnic, racial, religious, or other group, hatred or incitement against the Hungarian nation, or any national, ethnic, racial, or religious group. [n122](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n122) On the international level, the International Covenant on Civil and Political Rights similarly enjoins signatory states to [\*160]  curb "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." [n123](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n123) The experiences of western democracies who have enacted hate speech regulations indicate that a limited proscription does not erode the government's commitment to protecting free speech and inquiry. [n124](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n124) Countries like England have found that hate speech regulations serve declaratory purposes because they indicate governments' commitment to the well-being of minorities. [n125](http://puffin.harker.org:2061/us/lnlib/frame.do?tokenKey=rsh-20.597772.283475553&target=results_DocumentContent&returnToKey=20_T25365931398&parent=docview&rand=1484882307473&reloadEntirePage=true" \l "n125) United States free speech jurisprudence is anomalous. Democracies generally recognize that preserving human rights supersedes bigots' desire to spread vituperative messages. The history of racism in the United States, from Native American dislocation, to slavery, to Japanese internment, demonstrates that here in the U.S., as in other democracies, intolerance and persecution can exist alongside free speech. Safeguards against the real harms of hate speech can prevent the erosion of civil rights.

### AT: Libertarianism

#### Even libertarians conceded that some exceptions are necessary—hate speech results in war and genocide and causes intrinsic violence

Arthur 11 (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> //[LADI](http://www.theladi.org/evidence))

Hate speech should not be tolerated in the name of free speech. It has real and devastating effects on peoples' lives and risks their health and safety. It's harmful and divisive for communities and hampers social progress in fighting discrimination. Left unchecked, hate speech can lead to war and genocide. Although the right to free speech is a fundamental value, it should not be allowed to outweigh the basic human rights of other people, especially their right to life. The popular catchphrase of free speech defenders is a quote attributed to Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.” Civil libertarians often defend and support the notion that the right to freely express offensive opinions is a bedrock human right that should not be abridged except under very narrow circumstances—typically for hate speech that directly incites violence against a person or group of persons. However, I support broader prosecution of hate speech—defined here as speech that disparages a person or class of persons based on an immutable characteristic (colour, race, origin, gender, sexual orientation, disability, and age), or their occupation, family or marital status, and religion or lack of religion. Proscribing hate speech more broadly would, I believe, foster a more inclusive, tolerant, and safer society. Many western countries already do criminalize hate speech in a more encompassing way, although enforcement is often weak and spotty. A typical example is Canada, where it is illegal to “expose a person or persons to hatred or contempt…on the basis of a prohibited ground of discrimination” (Canadian Human Rights Act) and to “wilfully promote hatred against any identifiable group” (Criminal Code of Canada). The United States, however, stands almost alone in its veneration of free speech at almost any cost. The U.S. Supreme Court insists that the First Amendment protects hate speech unless it constitutes a “ true threat” or will incite imminent lawless action. But societies should take action against hate speech without requiring that a few specific words by themselves must directly and immediately incite violence, or be likely to. That sets a very high bar and is difficult to prove. It also allows purveyors of hate to evade responsibility simply by not making explicit calls for violence. Further, our new digital world raises the stakes—the Internet has spawned a proliferation of hate speech along with useful information such as bomb-making instructions or the home addresses of abortion providers. This has enabled others to commit violence long after the words were first published. Violent acts of hate are generally preceded by hate speech that is expressed publicly and repeatedly for years, including by public figures, journalists, leading activists, and even the state. Some examples include Anders Behring Breivik’s terrorist acts in Norway (June 2011), the assassination of Kansas abortion provider Dr. George Tiller (May 2009) and other abortion providers in the 1990’s, the Rwandan genocide against the Tutsis (1994), the ethnic cleansing of Bosnian Muslims in Bosnia-Herzegovina (1992-1995), and the Nazi Holocaust. Courts of law should be able to look at broader patterns of hate speech in the culture to determine whether a hateful atmosphere inspired or contributed to violence, or would likely lead to future violence. When hate speech is relatively widespread and acceptable (such as against Muslims or abortion providers), it’s not difficult to see the main precursor to violence—an escalation of negative behaviour or rhetoric against the person or group. Dr. George Tiller endured a previous assassination attempt and a decades-long campaign of persecution waged by the anti-abortion movement, which worsened over time, especially in the last year or two of the doctor’s life. Anders Behring Breivik had actively opposed multiculturalism for years and had immersed himself in Christian Right propaganda about the supposed threat of Muslim immigration to Europe, a view popularized only in recent years by a growing army of anti-Muslim bloggers and right-wing journalists. As these examples illustrate, we can often pinpoint the main purveyors of hate speech that lead to violent crimes. In the Norway shootings, the killer Breivik relied heavily on writings from Peder Jensen (“Fjordman”), Pamela Geller, Robert Spencer, Mark Steyn, Jihad Watch, Islam Watch, Front Page Magazine, and others. Such individuals and groups should be charged with incitement to hatred and violence. Similar culpability for the assassination of Dr. George Tiller should rest on the shoulders of the extremist anti-abortion group Operation Rescue and Fox News commentator Bill O’Reilly. In general, anyone spewing hate to an audience, especially on a repeated basis, could be held criminally responsible. This would include politicians, journalists, organizational leaders and speakers, celebrities, bloggers and hosts of online forums, and radical groups that target certain categories of people. We also need to hold people in accountable positions to a higher standard, such as government employees and contractors, ordained religious leaders, CEOs, and the like. Criteria by which to assign culpability could include a speaker’s past record of prior hate speech against a particular person or group, how widely and frequently the views were disseminated, and the specific content and framing of their views. In cases where violence has already occurred, judges could determine how likely it was that the violent perpetrators had been exposed to someone’s specific hate speech, and hand down harsher sentences accordingly. The Harms of Hate Speech The apparent assumption of free speech defenders is that offensive speech is essentially harmless—that is, just words with no demonstrable link to consequences. But questioning whether speech can really incite someone to bad behaviour seems irresponsibly obtuse. Obviously, words have consequences and frequently inspire actions. A primary purpose of language is to communicate with others in order to influence them. If that weren’t so, there would be no multi-billion dollar advertising industry, no campaigns for political office, no motivational speakers or books, no citizen-led petitions, no public service announcements, and no church sermons, along with a myriad of other proven examples where speech leads others to act. The majority of hate speech is targeted towards gays, women, ethnic groups, and religious minorities. It’s no coincidence that straight white men are generally the most ardent defenders of near-absolute free speech, because it’s very easy to defend hate speech when it doesn’t hurt you personally. But hate speech is destructive to the community at large because it is divisive and promotes intolerance and discrimination. It sets the stage for violence by those who take the speaker’s message to heart, because it creates an atmosphere of perceived acceptance and impunity for their actions. Left unchecked, it can lead to war and genocide, especially when the state engages in hate speech, such as in Nazi Germany. Hate speech also has serious effects on its targets. Enduring hatred over many years or a lifetime will take a toll on most people. It can limit their opportunities, push them into poverty, isolate them socially, lead to depression or dysfunction, increase the risk of conflict with authority or police, and endanger their physical health or safety. In 1990, the Canadian Supreme Court stated that hate speech can cause “loss of self-esteem, feelings of anger and outrage and strong pressure to renounce cultural differences that mark them as distinct.” The court agreed that “hate propaganda can operate to convince listeners…that members of certain racial or religious groups are inferior,” which can increase “acts of discrimination, including the denial of equal opportunity in the provision of goods, services and facilities, and even incidents of violence.” In democratic societies that stand for equality and freedom—often with taxpayer-funded programs that promote those values by assisting vulnerable groups—it makes no sense to tolerate hate speech that actively works to oppose those values. Further, hate speech violates the spirit of human rights codes and laws, diminishing their purpose and effect. A society that allows hate speech is a society that tolerates prejudice at every level—politically, economically, and socially—and pays the consequences through increased discrimination and violence.

### AT: Academia

#### Speech protesting the government would not conflict with speech codes, so you don’t get access to those impacts.

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.]

Our response to the two wrongs argument is elaborated in greater detail in the next section, but one aspect of it is worth men- tioning now. The term “censorship” is appropriately attached to regu- lation by which the heavy hand of government falls on weaker, un- popular private speakers, or else on political dissidents who are at- tempting to criticize or change government itself)0 But with hate- speech regulation, few of the concerns that underlie our aversion to censorship are present. Hate-speakers are not criticizing government, but someone weaker than themselves. In prohibiting it, universities are not attempting to insulate themselves from criticism; the political- process concerns over governmental self-perpetuation are not present. The speech being punished is far from the core of political expres- sion-it carries few ideas at all except “I hate and reject your person- hood."“ Indeed, hate speech silences the victim and drives him away." Thus, when the government regulates hate speech, it en- hances and adds to the potential social dialogue, rather than sub- tracts from it.“ The next section explains how neoconservatives shrink from differences such as these, even though they are relatively obvious, in large part because they threaten a key element of the conservative faith, the level playing field.

### AT: Line Drawing Problem

#### Classifying hate speech is clear cut

**Rosenfeld 01** [Michel Rosenfeld (Justice Sydney L. Robins Professor of Human Rights, Benjamin N. Cardozo School of Law), "HATE SPEECH IN CONSTITUTIONAL JURISPRUDENCE: A COMPARATIVE ANALYSIS," Jacob Burns Institute for Advanced Legal Studies, 2001]

Unless one adopts a Holmesian view of speech139 , the “slippery slope” argument is largely unpersuasive, and this seems particularly true in the context of hate speech. Indeed, in many cases, such as those involving Holocaust denial, cross burning, displaying swastikas, calling immigrant “animals”, there do not appear to be any line drawing problems. These cases involve clearly recognizable expressions of hate which constitute patent assaults against the most basic dignity of those whom they target, and which fly in the face of even a cursory commitment to pluralism. On the other hand, there are cases of statements, which some groups may find objectionable or offensive, but which raise genuine factual or value based issues, and which ought therefore be granted protection. For example, strong criticism of the Pope for his opposition to contraception and to homosexual relationships as being “indifferent to human suffering caused by overpopulation and an enemy of human dignity for all” may be highly offensive to Catholics, but even in a country in which the latter are a religious minority should clearly not be in any way censored, punished or officially characterized as hate speech. There is of course a grey area in between these two fairly clear cut areas, in which there are difficult line drawing problems, as exemplified by the German controversy over the claim that “soldiers are murderers”140 . Line drawing problems, however, are quite common in law as they tend to arise whenever a scheme of regulation attempts to draw a balance among competing objectives. This problem may well be exacerbated when a fundamental right like free speech is involved, but that justifies at most deregulating the entire gray area, not toleration of all hate speech falling short of incitement to violence.

### AT: Backlash

#### No backlash – Australia proves hate speech laws become integrated into culture

Gelber & McNamara 15 [Katharine Gelber (Professor of Politics and Public Policy at the University of Queensland), Luke McNamara, "The Effects of Civil Hate Speech Laws: Lessons from Australia," Law & Society Review, 2015] AZ

To these we would add that the laws have become an accepted part of the Australian political landscape. An April 2014 opinion poll showed 88 percent of the public supporting the retention of federal hate speech laws (ABC News 2014). This shows a very large majority of the public supports the idea that hate speech laws are an appropriate component of the framework within which public debate takes place. This gives them a normative influence, and provides participants in public debate with a language they can employ to condemn hate speech. These are the important benefits that have been achieved from 25 years of hate speech laws in Australia.

#### Informal policies after the aff lack the clarity of definitive speech codes – turns chilling effect

**Juhan 12** S. Cagle Juhan (Judicial Law Clerk, Western District of Virginia; JD University of Virginia School of Law). “Free Speech, Hate Speech, and the Hostile Speech Environment.” Virginia Law Review. November 2012

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University) 70 illustrates the problem with **a discretionary system: government bureaucrats serve as roving commissioners, picking and choosing which speech to regulate,** often on the grounds that certain groups object to it. The danger is threefold. First, **the absence of a written policy leaves a vacuum.** By their very nature, **decisions made on a case-by-case basis lack debated, agreed-upon, and dis-seminated principles that can guide action**.’ Thus, one cannot ex ante abide by guidelines that are unknowable until after one speaks. **The result is the commonly cited “chilling effect”: speakers will say less, even if their speech would be constitutionally pro-tected, because they cannot be assured that they will not be pun-ished for** it.‘ **Second, informal, standardless decision-making processes about what speech should be allowed** are viewed with particular skepti-cism in First Amendment doctrine because they both **contribute to the chilling effect and enhance the risk of discriminatory or arbi-trary regulation**.’ **Ad hoc judgments allow universities to sanction speech** because they disapprove of it, which is precisely the out-come that the First Amendment was designed to prevent.‘The third and related concern is that **administrators are easily captured by campus constituencies that mobilize against hateful or merely unpopular speech**.’ The Iota Xi case offers a clear example of this problem. Students objecting to the fraternity’s speech convinced an administrator that the speech created a hostile educational environment and conflicted with the university’s mission; administrators subsequently imposed sanctions, despite not having done so in an initial meeting with the fraternity that occurred the same day as the one with the offended students. The risk of “captured” administrators is especially high when hate speech is at issue.’ Hate speech frequently targets minorities or historically disfavored groups. These constituencies, in addition to understandably disagreeing with hate speech that disparages them, are some of the most vocal proponents and defenders of the equality, diversity, and tolerance norms that have gained incredible purchase in the realm of higher education. Accusations or percep-tions that a university or its administrators are not sympathetic enough to these norms or to the groups invoking them can have adverse consequences for a university’s prestige and an administra- tor’s career.’ Therefore, **there are strong personal and institutional incentives** to err on the side of equality, diversity, and tolerance ideals and against constitutionally protected speech.‘ One observer has aptly termed **ad hoc decision-making processes “implicit speech codes**.” ’ Ultimately, however, whether ex-plicit or implicit, speech codes increase (1) the chilling effect on speech, (2) the danger of viewpoint discrimination, and (3) the op-portunity for constituencies to suppress opponents by capturing administrators.’

## Authors

### AT: Davidson- Cal Polytechnic Study

#### 1. Hold their prefer empirics args to a very high threshold- this specific study was conducted by a senior attempting to complete their major- not by an individual who is experienced in the arena

2. No expert consensus from the card they cut- doesn’t cite the specifics of where the experts in the card got their degrees or how they came about studying their specific things

Davidson 16- their author from the specific article [Davidson, Alexander. “The Freedom of Speech in Public Forums on College Campuses:

This project will use interviews from three experts: An unnamed university administrator at an unnamed university, a constitutional theorist and a mass media law professor. The questionnaire has been created to answer the research questions presented in this project and will delve deeper into each issue.

3. It isn’t repsentative of other studies- single site case study at one university- that is most definitely not big enough

4. Timeframe and the resources of the study is a joke- can’t make bigger assumptions from the study

Davidson 16- their author from the specific article [Davidson, Alexander. “The Freedom of Speech in Public Forums on College Campuses:

One of the major limitations for this project is that it is a short-term study that will take place over two quarters (20 weeks). With more time, more information could have been gathered that mirror situations that have taken place at California Polytechnic State University to showcase that this either is or is not an isolated event. Another limitation is the lack of resources available. For example, there are experts in the field of study, mainly constitutional theorists, which could have provided more insight; however, I do not have the money, or means, to get in contact with many of these individuals because many of them are not located within the Central Coast of California.

### AT: Calleros

#### Calleros has 2 DAs- they force the burden onto students and not every setting is as progressive as his examples- our evidence directly indicts theirs

**Delgado and Yun 96** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993 “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”. 1996. Arizona State Law Journal. <http://ssrn.com/abstract=2094597>. ] NB

Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works. We would just note two reservations. The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people \*1282 of color. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech-their favorite mechanism-seemingly has worked. The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one. In general, we believe that traditional defenders of free speech must beware of the tendency to light upon a single solution to a complex problem. The purpose of this essay is to explore a type of unitary or essentialist thinking that we find prevalent in First Amendment absolutist circles. Although we welcome Calleros' article, we think that it has overtones of this simplistic one-size-fits-all approach. It is in the hope that the future discussion of hate speech will someday exhibit the kind of nuance that we see in other areas of constitutional law, for example equal protection, that we write this essay

### AT: Glasser – Whites Control Speech Codes

#### 1. This evidence draws on analytics from 1990s- our evidence about how status quo courts can check better because the evidence is more recent

#### 2. The evidence is predictive and is about what would have happened if the codes were actually in force- they don’t take into account every single factor

#### 3. There is a very clear brightline for what counts as hate speech- anything that is uttered by one individual that has harmful or real racial potential dialogue between others i.e. if a white person was to use the “N” word- that is what current courts would check against.

### AT: ACLU- Open Discussion 🡪 Change

#### 1. Nonunique- we can police free speech but we can also allow for open discussion. They hve to prove that there is a direct tradeoff with having codes and the free speech that others have.

#### 2. Default negative- they don't have any empirics about how verbal discussion has lead to any change- our evience grounds in empiriclal support which outweighs on this question because it provides a better analysis of what happens

#### 3. They force the burden on to students which trades off with their capability to get a better education

### AT: Economist- Restrictions empower the right

#### ---Overview—none of this evidence is specific to the type of free speech that they allow--

#### 1. Prefer our evidence- it’s specific to college campuses in the US whereas their evidence is about hate speech laws in other countries. That means that they don’t control for similar factors that occur within these areas. They have not won a reason why this evidence has occurred in the status quo

#### 2. Their evidence is also predictive about Mr. Wilders’ influence, they say that “using the law to attempt to silence Mr. Wilders makes it more likely that he will one day wield real power.” That doesn't indicate that he ever took over real power- this evidence doesn't have any empirics

#### 3. No uniqueness- Trump’s campaign has already made the people who were silenced very oppressive.

### AT: Dalmia- Hate Speech Bans opposite effect

#### ---Overview—none of this evidence is specific to the type of free speech that they allow--

#### 1. Prefer our evidence- it’s specific to college campuses in the US wheras their evidence is about hate speech laws in other countries. That means they don’t control for similar factors that occur within these areas.

#### 2. Even if there are cases in which bans have had certain reverse effects- their evidence doesn’t isolate that it was a hate speech ban that caused it and isn’t comparative with new types of regulations because there may be alternate factors for why campuses stopped certain minorities from visiting campus

#### 3. Enforcement is proportional to crime – empirical evidence from national institutes confirms. There is no abuse in the enforcement of hate speech laws.

**Delgado and Yun 94.**

Richard Delgado. David H. Yun. “Pressure Valves and Bloodied Chickens: AN Analysis of Paternalistic Objections to Hate Speech Regulation”. California Law Review. July 1994

**A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves**.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses.**62But the empirical evidence does not suggest that this is the pattern**, much less the rule. **Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse**. 63 **Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.'** Moreover, **the distribution of enforcement seems to be consistent with commission of the offense**. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, **the reverse-enforcement objection seems to have little validity** in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive coun- tries.67 **The likelihood that officials** in the United States would **turn hate speech laws** into weapons against **minorities seems remote.**

#### 4. Things like context solves for crowding out speech - that’s productive to solve structural violence

Arthur 11 (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> //

A common objection to prosecuting hate speech is that it might endanger speech that counters hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

### AT: Gates 94 [State Antiblack]

#### 1. The 1AC also trusts the very same institutions that they criticize us for using free speech codes. If the systems are truly antiblack, the aff relies on people enforcing free speech law, people who are punished, are still part of those institutions

#### 2. The 1AR doesn’t get to go for uniqueness framing because overt racism is still worse, it causes direct harm, and increases violence. If the aff wins’ their framing- their impacts are linear which means they have to prove the aff is better than the squo or a competitive policy option

### AT: Strossen 90- Minorities persecuted, not white ppl

#### 1. Strossen’s incorrect- empirically flows neg

**Rumney 3** [32 Comm. L. World Rev. 117 (2003) The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists, Rumney, Philip N. S. (Philip Rumney is a professor of criminal justice at Bristol Law School ); https://heinonline.org/HOL/Page?handle=hein.journals/comlwr32&start\_page=117&collection=journals&id=127 //BWSWJ]

In addition, it is clear that the incitement law in this country does not outlaw 'legitimate anger at real discrimination', just as it does not outlaw most expressions of racism. Rather, it draws the line at any speech that incites racial hatred. In other words, particular viewpoints are not outlawed. Rather, it is the manner in which the words are communicated that is regulated. It has also been suggested that Malik provides evidence that the incitement provision has been applied in a discriminatory manner.213 The problem with this claim is that there is absolutely no evidence to substantiate it. This claim appears to be based upon the grounds that Malik involved the prosecution of a black man. To suggest bad faith on the part of the Attorney-General, police, prosecutors, and several judges on such a flimsy basis is perhaps an indication of the weakness of much of the analysis in this area. Another version of this criticism is provided by Coliver who claims that incitement provisions 'lend themselves to abuse'.214 Why hate speech laws are inherently more likely to be open to abuse than a myriad of other civil and criminal laws is never made clear. In support of this claim Coliver cites the prosecution of black people noted earlier: 'the 1965 [Act] was used during its first decade more effectively against Black Power leaders than against white racists'.215 If by 'more effectively' Coliver is refer- ring to the number of prosecutions or convictions then her claim is misleading because it takes no account of why prosecutions were being instigated. In addition, she takes no account of the prosecution record after the mid-1970s. Similar criticisms can be made of the claim by Korengold that black people were, at least initially, 'dispro- portionately prosecuted' under the incitement provision.1 6 In this context Lester and Bindman noted in 1972 that 'there is a widespread and erroneous impression that most of the prosecutions [under the 1965 Act] have been brought against black people'.217 They also argue that the prosecutions directed at minorities were 'against a back- ground of growing anti-white invective by members of the Black power movement'.218 It is worth noting the statistical breakdown of prosecutions during the period when the 1965 Act was in force. Dur- ing this time there were prosecutions against fifteen individuals, with ten convictions. Five of the defendants were black and ten white. Of those convicted five were black and five white.219 It is also worth considering later prosecutions under the 1976 Act. Between 1976 and 1981 there were prosecutions against twenty-two individuals all of whom were white, with fifteen convictions. When one examines domestic commentaries to see if there is any support for the claim that the incitement provision has been abused we find only limited evidence. In the work of Williams, 2 21 Dickey,222 Lester and Bindman, 223 Leopold, 224 Bindman, 22' Gordon, 226 and Cotterrel1 227 we find criticism of the legislation, but few make allega- tions of anything approaching an abuse of prosecutorial discretion. 28 One of the exceptions is an early commentary by Longaker, who questioned the decision to prosecute the defendant in Malik. He ar- gued that where people such as Malik are not heard, the 'political system is correspondingly impoverished' 2 9 and that the incitement provision was 'not only short sighted but can easily exacerbate the problem [of racism]'. 231 Another early commentary argued that the wording of the incitement provision was 'potentially wide', 231 though as already noted, this does not appear to have caused significant problems. It appears that much of the criticism has been levelled at the fact that it is difficult to gain convictions under the incitement 232 law. The claim that the incitement provision has been abused is further undermined by factual errors. In partly drawing upon the work of Neier, Strossen claims that the Race Relations Act 1965 has been: regularly used to curb the speech of blacks, trade unionists and anti- nuclear activists. In perhaps the ultimate irony, this statute which was intended to restrain the neo-Nazi National Front, instead has barred 33 This statement contains numerous factual errors. The curbs on 'trade unionists' were neither legal restrictions, nor did they have anything to do with the incitement provision.234 Neither were the prosecutions against peace activists. These were actually prosecutions brought under the Public Order Act 1936 and official secrets legislation as noted by Neier, but not Strossen.235 The curbs on the Anti-Nazi League involved temporary restrictions on public processions in an area where the police believed there was a serious danger of public disorder:236 a crucial point ignored by both Strossen and Neier. Cru- cially, these restrictions were not imposed under the Race Relations Act 1965, as there were and are no provisions under the incitement law that give the police any powers to ban demonstrations. 2 3 Rather, the law under which these restrictions were imposed was the Public Order Act 1936 which was introduced interalia to clarify: how the authorities could judge a meeting or procession within existing case law; whether they were designed to convert ... or intimidate. It also attempted to increase protection for those subject to abuse or phys- ical violence but stopped short of defending specific minorities or outlawing named organisations.

#### 2. Enforcement is proportional to crime – empirical evidence from national institutes confirms. There is no abuse in the enforcement of hate speech laws.

**Delgado and Yun 94.**

Richard Delgado. David H. Yun. “Pressure Valves and Bloodied Chickens: AN Analysis of Paternalistic Objections to Hate Speech Regulation”. California Law Review. July 1994

**A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves**.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses.**62But the empirical evidence does not suggest that this is the pattern**, much less the rule. **Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse**. 63 **Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.'** Moreover, **the distribution of enforcement seems to be consistent with commission of the offense**. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, **the reverse-enforcement objection seems to have little validity** in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive coun- tries.67 **The likelihood that officials** in the United States would **turn hate speech laws** into weapons against **minorities seems remote.**

#### Outweighs Strossen- its more recent and provides a wider review of minorities in the context of speech codes, it accounts for their empirics.

#### 3. The Strossen evidence cherrypicks UMich empirics- they are super progressive now and are effective with their codes

WT 15 [Washington Times Http, 2-10-2015, "EDITORIAL: University of Michigan regulates ‘nice’ speech," Washington Times, <http://www.washingtontimes.com/news/2015/feb/10/editorial-university-of-michigan-regulates-nice-sp/>] NB

The unwary, which includes most of us, should step lively if stumbling onto the campus of [the University of Michigan](http://www.washingtontimes.com/topics/the-university-of-michigan/). You might offend by saying “good morning” to someone who is having an awful morning. Your obliviousness to the pain of others would be unforgivable, if not yet illegal. The [university](http://www.washingtontimes.com/topics/the-university-of-michigan/) has a new “Inclusive Language Campaign,” spending $16,000 for signs, banners and other reminders to students (and maybe even to a few professors) to avoid hurting feelings with an unthinking word spoken in haste. Some of the words seem innocent enough, and no doubt are on saner campuses elsewhere: insane, retarded, gay, tranny, gypped, illegal alien, fag, ghetto and raghead. Certain phrases are forbidden, too. You can’t say, perhaps after flunking a test in calculus, “I want to die.” That might offend someone who has just botched a suicide attempt and is doomed to continue on this dirty, rotten planet. Don’t say “that test simply raped me,” either. You must respect the rules of the campus rape culture. The idea, university spokesman Rick Fitzgerald tells the College Fix, which monitors campus nonsense, is that the Inclusive Language Campaign tries to “address campus climate by helping individuals understand their words can impact someone and to encourage individuals to commit to creating a positive campus community.” (And perhaps someone in the English Department could help a university spokesman with the spoken language.)

#### 4. Britain is outdated- it’s from 50 years ago and doesn’t state that race relations have gotten worse- globally, they’ve gotten better

**Bell 09** [Bell, Jeannine (2009) "Restraining the Heartless: Racist Speech and Minority Rights," Indiana Law Journal: Vol. 84: Iss. 3, Article 9. Available at: http://www.repository.law.indiana.edu/ilj/vol84/iss3/9 ] NB

Canada, Denmark, France, Germany, and the Netherlands have fairly similar hate speech laws, which commentators say are actively enforced. Hate speech laws in these countries have both criminal and civil penalties and are premised on the need to protect human dignity "quite apart from any interest in safeguarding public order."' 1 4 A conviction under the criminal incitement laws of Canada requires proof ofeither intent to incite hatred or, in the alternative, the likelihood of breaching the peace. By contrast, one can be convicted under the hate speech laws of France, Denmark, Germany, and the Netherlands without intending to incite hatred and without having breached the peace. 10 5 The approach taken by countries around the world to place restrictions on racist speech is also reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. These human rights instruments, though they explicitly protect freedom of expression, also recognize the link between hate speech and discrimination and allow significant restrictions on hate speech. 106 Article 20(2) of the International Covenant on Civil and Political Rights states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."' 0 7 Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination requires governments to outlaw all dissemination of ideas based on racial superiority or hatred. It also requires them to prohibit all organizations which promote and incite racial discrimination.

### AT: Calleros 95- Reverse Enforcement Against Black Youth

#### 1. They’ve cherrypicked examples of when minorities have been perceieved as hostile, i.e. an African American expressing radical race views, or another student depicting violence in their drawings of Malcolm X- two empirics don’t justify your evidence here

#### 2. All of the carded answers above apply and outweigh because they are so much more recent

#### 3. Student activism, civic engagement and protests are at an all-time high even with speech codes

**HERI 16** [Higher Education Research Institute. “College students’ commitment to activism, political and civic engagement reach all-time highs”. UCLA Newsroom. February 10, 2016. <http://newsroom.ucla.edu/releases/college-students-commitment-to-activism-political-and-civic-engagement-reach-all-time-highs>. ]

Colleges and universities across the U.S. experienced an increase in student activism over the past year, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

#### 4. Their evidence doesn’t make a comparative claim that says enforcement on average was against minorities rather than actual racist people, it omits those statistics which proves their authors are biased

### AT: Herron 94- HS 🡪 Backlash

#### 1. They don’t have a legitimate empiric of when backlash occurred at a university that had speech codes, the card talks about how hate speakers won’t consider rehab- A. why would they have went to rehab in the first place if it’s in their culture, B. there is no evidence in the aff that solves rehab issues

#### 2. The impact of this arg is that we won’t be able to find racist movements and dispand them- but protests are already high right now- that’s HERI- which proves that we already know how to disband their movements

#### 3. Australian regulation empirically reduced hate speech

Gelber & McNamara 15 [Katharine Gelber (Professor of Politics and Public Policy at the University of Queensland), Luke McNamara, "The Effects of Civil Hate Speech Laws: Lessons from Australia," Law & Society Review, 2015]

A third finding is that, in the total population of letters analysed,35 there was a modest but significant reduction in the expression of prejudice over time. When the letters are divided into three equal time periods, the proportion of “prejudicial” letters published in 1992–1997 was 33.86 percent, in 1998–2003 the figure was 29.08 percent and in 2004–2009 the figure was 28.54 percent. This reduction in the expression of prejudice is a beneficial outcome. While some might still oppose the right, for example, of same sex couples to marry, as noted one of the aims of hate speech laws is not to shut down debate on controversial issues of public policy, but to assist in generating a debate that does not vilify. What has been captured by our analysis is not the expression of views opposing or supporting (e.g.) same sex marriage, but whether in expressing their views, the writer engaged in hate speech. Of course, our data cannot tell us clearly the extent to which hate speech laws themselves contributed to this reduction in mediated expressions of prejudice and we acknowledge that a myriad of social factors has contributed to this change. Nevertheless, the laws likely played a part in forming the climate within which newspapers are publishing fewer prejudicial letters. Interviews with members of targeted communities also yielded insights into whether hate speech laws have exerted a positive influence on discourse. Indigenous interviewees tended to be pessimistic, stating that the prevalence of hate speech toward Aboriginal and Torres Strait Islander people over time had remained the same, or increased. One interviewee said, If you’ve got commentators who are out there with their hate speeches, a lot of it can be dressed up as acceptable speech, when, in actual fact, it’s totally unacceptable. But, somewhere along the way, we’ve kind of been numbed into accepting that it’s okay ... A common theme in the views expressed by interviewees was that hate speech remained a prevalent feature of life, but that its primary targets had changed. For example, a member of the Vietnamese community felt that things had improved (compared to the 1980s and 1990s) for Vietnamese people in Australia, but that racist attention had shifted to Muslims and more recent immigrant communities from Afghanistan and Africa. This view was echoed by Sudanese and Afghan interviewees. A Turkish interviewee said, I think it shifts from community to community ... so it might have been sixty, seventy years [ago] or whatever, the Italians and the Greeks, then the Middle Eastern [and] Turkish people, then it shifted to the Chinese, now to the ... African and the Afghani community. No interviewees thought that hate speech laws had had a profoundly positive influence on the quality of public discourse. However, a number were of the view that the laws had yielded some benefits: Has legislation had an impact on the level of hate speech? I think it has to a certain extent. It doesn’t mean it’s eliminated it ... But people are more conscious and aware of it ... it has curtailed some of the utterances that people might hold back ... So the legislation has had some role in perhaps reducing or minimising that harm. One of the most positive assessments of the laws’ ability to prompt changes in public discourse came from Gary Burns, a Sydney campaigner who has pursued a number of homosexual vilification complaints under the New South Wales civil laws. Burns was strongly of the view that the publicity generated by litigation had improved the quality of public discourse regarding homosexuality. He regards his successful vilification complaint against high profile radio broadcaster, John Laws,36 as a “breakthrough case” that set a precedent for the line between acceptable and unacceptable language in radio broadcasting and public discourse (Burns 2013). These insights are consistent with our letters to the editor analysis, which showed stronger evidence of positive speech modification in relation to sexuality than in relation to race/ethnicity

### AT: Strossen 90- Censorship => Martyrdom

#### 1. It’s fine to regulate hate speech that has no potential to radicalize

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), “The Neoconservative Case against Hate-speech regulation- lively, d’souza, Gates, Carter, and the toughlove Crowd” Vanderbilt Law Review. 1994.] NB

Our response to the two wrongs argument is elaborated in greater detail in the next section, but one aspect of it is worth men- tioning now. The term “censorship” is appropriately attached to regu- lation by which the heavy hand of government falls on weaker, un- popular private speakers, or else on political dissidents who are at- tempting to criticize or change government itself)0 But with hate- speech regulation, few of the concerns that underlie our aversion to censorship are present. Hate-speakers are not criticizing government, but someone weaker than themselves. In prohibiting it, universities are not attempting to insulate themselves from criticism; the political- process concerns over governmental self-perpetuation are not present. The speech being punished is far from the core of political expres- sion-it carries few ideas at all except “I hate and reject your person- hood."“ Indeed, hate speech silences the victim and drives him away." Thus, when the government regulates hate speech, it en- hances and adds to the potential social dialogue, rather than sub- tracts from it.“ The next section explains how neoconservatives shrink from differences such as these, even though they are relatively obvious, in large part because they threaten a key element of the conservative faith, the level playing field.

#### 2. Cross apply Parkeh 12 – Two warrants take out your arg for why those who are censored are seen as martyrs

**a) the amount of hate speech goes down since most people don’t want to be associated with them so we still solve for the majority of hate speech and b) they’re also driven underground so no publicity for the martyrs**

#### 3. No martyr effect – only one case in two decades of hate speech regulation in Australia

Gelber & McNamara 15 [Katharine Gelber (Professor of Politics and Public Policy at the University of Queensland"The Effects of Civil Hate Speech Laws: Lessons from Australia," Law & Society Review, 2015]

No other case in over two decades of civil litigation has triggered a comparable martyr effect. Recalcitrant Holocaust denier Frederick Toben attempted to adopt a martyr position when he was found to have breached the same federal racial hatred law years earlier.39 His refusal to abide by orders of the Federal Court to remove Holocaust denial material from his Web site resulted in 24 contempt of court findings and, ultimately, a 3 month jail term for contempt of court (Akerman 2009). However, in public discourse this attempt served to consolidate his infamy and status as a powerful illustration of precisely why hate speech laws were enacted in the first place (Aston 2014; Richardson 2014). Two distinctive features of Australia’s hate speech laws are noteworthy here. First, given, that most transgressions of the law are addressed in confi- dential conciliation, with less than 2 percent resulting in court or tribunal decisions that enter the public domain, opportunities for martyrdom are rare. Second, because the laws rely overwhelmingly on civil remedies, they tend not to produce the criminal sanctions on which the claimed martyr effect is based. The Bolt controversy does not justify a general conclusion that hate speech laws necessarily produce a counterproductive martyr effect, as it was an atypical event in the history of civil hate speech laws in Australia.

### AT: Gellin 94- Spencer Empiric

#### 1. The evidence doesn’t make a comparative claim in that they were not white nationalists or supporters of him before the incident. The evidence rather states that they were already supporters who just decided to show up at his rally

#### 2. Speech codes were also effective in this instance in that they decreased the amount of people who showed up to his meeting,

#### 3. This is as far as you can get from a US campus specific example, the arrest and violatiosn were made in Hungary which may have different context

### AT: Gates 94- Civil Protections Increase

#### 1. No internal link- None of the evidence proves that the Skokie case from 79 has been able to generate free speech rights for minorities in the future- especially when their own uniqueness evidence in the aff indicates that codes consistently have hurt them

#### 2. Empirically denied- Free speech has not served as a catalyst for change- empirics

**Delgado and Yun 94** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993, University of Colorado), Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5>] NB

Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did. 8 Other reform movements also are said to have relied heavily on free speech.6 9 This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment.70 The original Constitution protected slavery in several of its provisions,7 1 and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. 72 Later, of course, abolitionism and civil rights activism broke out. But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights movement of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them.7 4 They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted.75 Their speech was seen as too forceful, too disruptive. Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. But the First Amendment, as then understood, served more as an obstacle than a friend.76 Why does this happen? Narrative theory shows that we interpret new stories in terms of the old ones we have internalized and now use to judge reality.7 7 When new stories deviate too drastically from those that form our current understanding, we denounce them as false and dangerous. The free market of ideas is useful mainly for solving small, clearly bounded dis- putes.78 History shows it has proven much less useful for redressing sys- temic evils, such as racism. 79 Language requires an interpretive paradigm, a set of shared meanings that a group agrees to attach to words and terms.8 0 If racism is deeply inscribed in that paradigm-woven into a thousand scripts, stories, and roles-one cannot speak out against it without appear- ing incoherent. t An examination of the current landscape of First Amendment excep- tions reveals a similar pattern. Our system has carved out or tolerated doz- ens of "exceptions" to the free speech principle: conspiracy; libel; copyright; plagiarism; official secrets; misleading advertising; words of threat; disrespectful words uttered to a judge, teacher, or other authority figure; and many more. 2 These exceptions (each responding to some inter- est of a powerful group)83 seem familiar and acceptable, as indeed perhaps they are. But a proposal for a new exception to protect some of the most defenseless members of society, 18-year old black undergraduates at predominantly white campuses, immediately produces consternation: the First Amendment must be a seamless web. It is we, however, who are caught in a web, the web of the familiar. The First Amendment seems to us useful and valuable. It reflects our inter- ests and sense of the world. It allows us to make certain distinctions, toler- ates certain exceptions, and functions in a particular way we assume will be equally valuable for others. But the history of the First Amendment, as well as the current landscape of doctrinal exceptions, shows that it is far more valuable to the majority than to the minority, far more useful for confining change than for propelling it.8"

#### This independently also takes out the next Strossen evidence they read:

#### A. They only cite the Birgimingham empiric whereas our evidence indicates leaders’ opinions across the civil rights movements about free speech

#### B. Our evidence takes into account more examples of discourse in addition to the civil rights movement

#### 3. Link Turn- Supporting the most extreme cases kills movements- their Skokie example proves

**Horowitz 79** [Horowitz, Irving Louis. Bramson, Victoria Curtis. (Professor of Sociology and political science at Rutgers University and editor-in-chief), (Deputy Attorney General. Division of Criminal Justice.” “Skokie, the ACLU and the Endurance of Democratic Theory”. Spring 1979. http://scholarship.law.duke.edu/lcp/vol43/iss2/17] NB

The ACLU, as a result of its support of Nazi rights, has suffered angry criticism and close to 25 percent withdrawal. David Goldberger noted that "nearly 2,000 of the 8,000 members of the Illinois ACLU have resigned in the year following Skokie. 20 ° The Anti-Defamation League of B'nai B'rith has argued that free speech could be restrained in this case because of the "psychic trauma ' ' z that would result if the Nazis marched and displayed their swastikas. Various branches of the ACLU, like those in St. Louis, Houston and Jackson (Mississippi) voted not to aid the American Nazi party, although it did so in one instance because of the direct inflammatory appeal of a $5,000 bounty "for every non-white person arrested or convicted for an attack on a white person." 22 Clearly, in this instance, Jews were classified with the nonwhite population. The ACLU position is based on First Amendment guarantees of unimpeded free speech for all Americans. The ACLU was careful to distinguish between support for free speech and support for the ideology of the National Socialist Party of America. Rather than push this distinction, or for that matter obliterate it as a mere legal artifact, it might be worthwhile first to outline the legal precedents; second, the extra-legal implication; and third, the issues raised by Skokie.

### AT: Calleros 95

#### they force the burden onto students and not every setting is as progressive as his examples- our evidence directly indicts theirs

**Delgado and Yun 96** [Richard Delgado (Professor of Law @ University of Colorado, JD, 1974 University of California Berkeley)and David H. Yun (Member of Colorado Bar. JD 1993 “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”. 1996. Arizona State Law Journal. <http://ssrn.com/abstract=2094597>. ] NB

Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works. We would just note two reservations. The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people \*1282 of color. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech-their favorite mechanism-seemingly has worked. The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one. In general, we believe that traditional defenders of free speech must beware of the tendency to light upon a single solution to a complex problem. The purpose of this essay is to explore a type of unitary or essentialist thinking that we find prevalent in First Amendment absolutist circles. Although we welcome Calleros' article, we think that it has overtones of this simplistic one-size-fits-all approach. It is in the hope that the future discussion of hate speech will someday exhibit the kind of nuance that we see in other areas of constitutional law, for example equal protection, that we write this essay.

### AT: Gates 94- Race Codes Get Coopted

#### 1. Their card only taks about Matsuda’s interpretation of historically oppressed groups- that’s based on a brightline theory which fails because:

#### A. It commits the fallacy of Loki’s wager- you could keep asking where the brightline is and finally shift it away from the entire issue

#### B. Nonunique with the entire aff- they aren’t able to figure out which type of speech they promote can be identified as activist speech or hate speech

#### The impact is that their examples cannot be extended to many instances in different issues

#### 2. Cards above prove that courts and contexts solve- like the Parekh 12 evidence

### AT: Strossen- Social Studies

#### Strossen’s counterspeech fails – people won’t speak out if they are in the position to be harmed.

Brown 15 Alexander Brown is Senior Lecturer in Contemporary Social and Political Theory at the University of East Anglia (UEA). “Hate Speech Law: A Philosophical Examination.” Routledge, 2015.

Of course, the direct targets of hate speech do not exhaust the claw of persons entitled to speak back to hate speech. They have other advocates or potential advocates who may speak back on their behalf. Strossen offers the following anecdotal evidence. '1 have seen many situations in which the per who is attacked initially cannot respond I... but somebody else jumps into the fray and speaks out, and that empowers and encourages the tar-geted individual victim' (e.g., Strossen 2012: 380) However, Strossen over-looks the fact that similar sorts of problems as those expounded upon above are also likely to confront third parties who are considering speaking back on behalf of the victims of hate speech. For example, it is often assumed that the Internet affords greater opportunities for counterspeech than ever before. It is relatively inexpensive, fast, and open to the whole community. But the fact that the Internet is so public means that it is a place of danger as well as opportunity for potential counterspeakers. Anecdotal evidence suggests that some people, potential "good Samaritans", may be too scared to speak out against hate speakers on Twitter for fear of provoking vitriolic abuse at the hands of these or yet other hate speakers who use this service. It is also worth noting that if Internet regulators were granted a legal or even an industry mandate to restrict uses of hate speech over the Internet, this would not deny people the right to speak back to offline hate speech online, and may even empower and encourage more of the very speaking back that Strossen to admires. Intriguingly, Strossen argues that if institutional authort-ies deny persons the right to engage in hate speech and this successfully deters them from doing so, then the upshot is that people are denied a chance of speaking back against hate speech (Strossen 2012: 3 86-387). But I think there is perversity in a logic that says we ought to let something harmful happen just to give people the opportunity to speak out against it. Surely the victims of hate speech would say, "Let's lust try to stop the hate speech if we can, and not worry so much about the counterspecch if we are successful."

### AT: Malik