# AT AC Stock

## Prewritten

### v Oppression Affs

#### 1. Hate Speech should be banned – the harms are cumulative, physical and transgenerational – it hurts its victims and primes society for mass oppression.

Delgado and Stefancic 9 Richard Delgado University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley. Jean Stefancic – Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” WAKE FOREST LAW REVIEW. 2009. <http://wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado_LawReview_01.09.pdf> GZ [33]

II. OBSERVATION NUMBER TWO: THE EVALUATION OF HARMS HAS BEEN INCOMPLETE One way, of course, to end the current standoff is for one of the parties to defer to the other’s point of view. Indeed, by pursuing an aggressive campaign of litigation, the free-speech camp has been implicitly urging that the other side do just that.58 One could also argue that a host of campus administrators, by enacting successive versions of hate-speech codes, are attempting to do the same thing, namely, wear the other side down.59 Ordinarily, though, it is the free-speech faction, with a string of lower-court victories to its credit, who urge the other side to “get over it” and toughen its collective hide.60 Yet, a careful weighing of the costs and benefits of speech regulation suggests that the case for it is closer than the ACLU and some courts seem ready to acknowledge. Before addressing the costs of hate-speech regulation versus the opposite, it is advisable to arrive at an understanding of what hate speech is. A Types of Hate Speech Hate speech, including the campus variety, can take a number of forms—direct (sometimes called “specific”) or indirect; veiled or overt; single or repeated; backed by power, authority, or threat, or not.61 One can also distinguish it in terms of the characteristic— such as race, religion, sexual orientation, immigration status, or gender—of the person or group it targets.62 It can isolate a single individual (“Jones, you goddamned X.”) or group (“The goddamned Xs are destroying this country.”). It can be delivered orally, in writing, on the Internet, or in the form of a tangible thing, such as a Confederate flag, football mascot, or monument.63 It can be anonymous, as with graffiti or a leaflet surreptitiously placed on a bulletin board or under a dormitory door, or its author can be plainly identified.64 The object of the speech may be free to leave, or trapped, as in a classroom or workplace.65 B. The Harms of Hate Speech The various forms of hate speech present different kinds and degrees of harm. The face-to-face kind is the most immediately problematic, especially if the target is not in a position to leave and the one delivering it possesses the power to harm. 1. Direct or Face-to-Face Hate Speech Although some courts and commentators describe the injury of hate speech as mere offense,66 the harm associated with the face-to-face kind, at least, is often far greater than that and includes flinching, tightening of muscles, adrenaline rushes, and inability to sleep.67 Some victims may suffer psychosocial harms, including depression, repressed anger, diminished self-concept, and impairment of work or school performance.68 Some may take refuge in drugs, alcohol, or other forms of addiction, compounding their misery.69 2. Hate Speech and Children With children, the harms of hate speech may be even more worrisome. A child victimized by racial taunts or browbeating may respond aggressively, with the result that he or she is labeled as assaultive.70 Or, the child can respond by internalizing the harm and pretending to ignore it. Robbed of self-confidence and a sense of ease, such a child can easily become introspective and morose.71 If the child’s parents suffer the same fate at work, they may bring these problems home so that the parents retain even less energy for their families than before.72 Recent scholarship points out how the pathologies associated with social subordination may be transgenerational, lasting for centuries, if not millennia, and include pain, fear, shame, anger, and despair.73 3. General Hate Speech With general hate speech, such as anonymously circulated flyers or speeches to a crowd, the harms, while diffuse, may be just as serious.74 Recent scholarship shows how practically every instance of genocide came on the heels of a wave of hate speech depicting the victims in belittling terms.75 For example, before launching their wave of deadly attacks on the Tutsis in Rwanda, Hutus in government and the media disseminated a drumbeat of messages casting their ethnic rivals as despicable.76 The Third Reich did much the same with the Jews during the period leading up to the Holocaust.77 When the United States enslaved African Americans and killed or removed the Indians, it rationalized that these were simple folk who needed discipline and tutelage, or else bloodthirsty savages who resisted the blessings of civilization.78 When, a little later, the nation marched westward in pursuit of manifest destiny, it justified taking over the rich lands of California and the Southwest on the ground that the indolent Mexicans living on them did not deserve their good fortune.79 Before interning the Japanese during World War II, propagandists depicted the group as sneaky, suspicious, and despotic.80 It is possible that the connection between general hate speech and instances of mass oppression may not be merely statistical and contingent, but conceptual and necessary.81 Concerted action requires an intelligible intention or rationale capable of being understood by others. One cannot mistreat another group without first articulating a reason why one is doing it—otherwise, no one but a sadist would join in.82 Without a softening-up period, early steps toward genocide, such as removing Jews to a ghetto, would strike others as gratuitous and command little support. Discriminatory action of any kind presupposes a group that labors under a stigma of some kind.83 The prime mechanism for the creation of such stigma is hate speech.84 Without it, genocide, imperialism, Indian removal, and Jim Crow could gain little purchase.85 C. The Harms of Speech Regulation If the harms of hate speech are sobering, what lies on the other side? What happens to the hate speaker forced to hold things in? Will he or she suffer psychological injury, depression, nightmares, drug addiction, and a blunted self image?86 Diminished pecuniary and personal prospects?87 Will hate-speech regulation set up the speaker’s group for extermination, seizure of ancestral lands, or anything comparable?88 The very possibility seems far-fetched. And, indeed, regimes, such as Europe’s and Canada’s, that criminalize hate speech exhibit none of these ills.89 Speech and inquiry there seem as free and uninhibited as in the United States, and their press just as feisty as our own.90 What about harm to the hate speaker? The individual who holds his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage.91 Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result.92 By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.93 But studies examining this possibility discount it.94 Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result. The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit.95 A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97 III. OBSERVATION NUMBER THREE: INTEREST BALANCING MUST TAKE ACCOUNT OF RELEVANT FEATURES OF HATE SPEECH If all types of hate speech are apt to impose costs,98 large or small, how should courts and policymakers weigh them? Not every victim of hate speech will respond in one of the ways described above. Some will shrug it off or lash back at the aggressor, giving as good as they got.99 The harm of hate speech is variable, changing from victim to victim and setting to setting.100 By the same token, it is impossible to say with assurance that the cost of hate-speech regulation will always be negligible. Some speakers who might wish to address sensitive topics, such as affirmative action or racial differences in response to medical treatments, might shy away from them.101 The interplay of voices that society relies on to regulate itself may deteriorate. In balancing hate speech versus regulation, two benchmarks may be helpful: a review of current freespeech “exceptions” and attention to the role of incessancy. A. Current Free-Speech Exceptions Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence.102 If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions. First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother.103 But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. How important is it to protect a black undergraduate walking home late at night from the campus library?104 As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?105 Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.106 B. Incessancy and Compounding Two final aspects of hate speech are incessancy—the tendency to recur repeatedly in the life of a victim—and compounding.107 A victim of a racist or similar insult is likely to have heard it more than once. In this respect, a racial epithet differs from an insult such as “You damn idiot driver” or “Watch where you’re going, you klutz” that the listener is apt to hear only occasionally. Like water dripping on stone, racist speech impinges on one who has heard similar remarks many times before.108 Each episode builds on the last, reopening a wound likely still to be raw. The legal system, in a number of settings, recognizes the harm of an act known to inflict a cumulative harm. Ranging from eggshell plaintiffs to the physician who fails to secure fully informed consent, we commonly judge the blameworthiness of an action in light of the victim’s vulnerability.109 When free-speech absolutists trivialize the injury of hate speech as simple offense, they ignore how it targets the victim because of a condition he or she cannot change and that is part of the victim’s very identity. Hate speakers “pile on,” injuring in a way in which the victim has been injured several times before. The would-be hate speaker forced to keep his thoughts to himself suffers no comparable harm. A comparison of the harms to the speaker and the victim of hate speech, then, suggests that a regime of unregulated hate speech is costly, both individually and socially. Yet, even if the harms on both sides were similar, one of the parties is more disadvantaged than the other, so that Rawls’s difference principle suggests that, as a moral matter, we break the tie in the victim’s favor.110 Moreover, the magnitude of error can easily be greater, even in First Amendment terms, on the side of nonregulation. Hate speech warps the dialogic community by depriving its victims of credibility. Who would listen to one who appears, in a thousand scripts, cartoons, stories, and narratives as a buffoon, lazy desperado, or wanton criminal? Because one consequence of hate speech is to diminish the status of one group vis-à-vis all the rest, it deprives the singled-out group of credibility and an audience, a result surely at odds with the underlying rationales of a system of free expression.111

#### Also answers their counterspeech and protrest arguments – physical and psychological harms mean that victims don’t have the energy and ability to participate in them.

#### 2. Public tolerance is bad and official affirmation that they deserve equal treatement matters.

Matsuda 89 Matsuda, Mari. Associate Professor of Law, University of Hawaii “Public Response to Racist Speech: Considering the Victim’s Speech.” Michigan Law Review, Volume 87, August 1989 GZ [23]

Racist hate messages are rapidly increasing and are widely distributed in this country using a variety of low and high technologies.82 The negative effects of hate messages are real and immediate for the victims.83 Victims of vicious hate propaganda have experienced physiological symptoms and emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide.84 Professor Patricia Williams has called the blow of racist messages "spirit murder" in recognition of the psychic destruction victims experience.85 Victims are restricted in their personal freedom. In order to avoid receiving hate messages, victims have had to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and demeanor.86 The recipient of hate messages struggles with inner turmoil. One subconscious response is to reject one's own identity as a victimgroup member.87 As writers portraying the African-American experience have noted, the price of disassociating from one's own race is often sanity itself.88 As much as one may try to resist a piece of hate propaganda, the effect on one's self-esteem and sense of personal security is devastating.89 To be hated, despised, and alone is the ultimate fear of all human beings. However irrational racist speech may be, it hits right at the emotional place where we feel the most pain. The aloneness comes not only from the hate message itself, but also from the government response of tolerance. When hundreds of police officers are called out to protect racist marchers,90 when the courts refuse redress for racial insult, and when racist attacks are officially dismissed as pranks, the victim becomes a stateless person. Target-group members can either identify with a community that promotes racist speech, or they can admit that the community does not include them. The effect on non-target-group members is also of constitutional dimension. Associational and other liberty interests of whites are curtailed by an atmosphere rife with racial hatred.91 In addition, the process of dissociation can affect their mental health. Dominant-group members who rightfully, and often angrily, object to hate propaganda share a guilty secret: their relief that they are not themselves the target of the racist attack. While they reject the Ku Klux Klan, they may feel ambivalent relief that they are not African-American, Asian, or Jewish. Thus they are drawn into unwilling complacency with the Klan, spared from being the feared and degraded thing. Just as when we confront human tragedy a natural disaster, a plane crash we feel the blessing of the fortunate that distances us from the victims, the presence of racist hate propaganda distances right-thinking dominant-group members from the victims, making it harder to achieve a sense of common humanity. Similarly, racist propaganda forces victim-group members to view all dominant-group members with suspicion.92 It forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders.93 This is one reason why social relations across racial lines are so rare in America. Research in psychosocial94 and psycholinguistic95 analysis of racism suggests a related effect of racist hate propaganda: at some level, no matter how much both victims and well-meaning dominant-group members resist it, racial inferiority is planted in our minds as an idea that may hold some truth.96 The idea is improbable and abhorrent, but it is there before us, because it is presented repeatedly. "Those people" are lazy, dirty, sexualized, money-grubbing, dishonest, inscrutable, we are told.97 We reject the idea, but the next time we sit next to one of "those people" the dirt message, the sex message, is triggered.98 We stifle it, reject it as wrong, but it is there, interfering with our perception and interaction with the person next to us.99 For the victim, similarly, the angry rejection of the message of inferiority is coupled with absorption of the message. When a dominant-group member responds favorably, there is a moment of relief the victims of hate messages do not always believe in their insides that they deserve decent treatment. This obsequious moment is degrading and dispiriting when the self-aware victim acknowledges it.100 Psychologists and sociologists have done much to document the effects of racist messages on both victims and dominant-group members.?10 Writers of color have given us graphic portrayals of what life is like for victims of racist propaganda.102 From the victim's perspective103 racist hate messages cause real damage.1

#### Means that your solvency turns are irrelevant: Matusda cites psychological evidence to prove that people believing they deserve equal standing and that the community cares is a prior question.

#### 3. Even if the aff doesn’t solve, it empowers targeted groups and spills over to larger antidiscrimination efforts. Multiple international empirics prove.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [16]

It is sometimes argued that a ban on hate speech can easily become an end in itself and an excuse to avoid well-conceived antidiscrimination policies. Although this can happen, as arguably it has in France,” there is no obvious reason why it should. As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the conﬁdence to ﬁght for them by actively participating in public life.

#### 4. Putting the government on the side of equality is valuable – it affects public values and private action.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [32]

Sixth, there is a body of interrelated practical objections to bans on hate speech. Law, it is argued, cannot by itself change people’s attitudes and eliminate hatred. This is true, but it does not entail the required conclusion. Because law throws the society’s collective moral and legal weight behind a particular set of norms of good behavior, it does have some inﬂuence on attitudes; its role is limited but nonetheless important. Besides, our concern is not so much to change attitudes in the ﬁrst instance as to deny some of them public expression, and law is best equipped to achieve that. As Aristotle observed, ethics is a matter of social ethos, and the latter is shaped by habits developed through acting in certain ways. On the conventional liberal view, our beliefs are the ultimate determinants of our behavior and are, or should be, a result ofrational reﬂection. As Aristotle argued, the relationship between belief and conduct is reciprocal and complex. Our beliefs shape our conduct, but they are also in turn inﬂuenced by it. By acquiring the habit of acting in certain ways, we build up an appropriate character and develop certain attitudes and ways of thinking. Law is primarily concerned with conduct, but it also shapes citizens' character, attitudes, and beliefs.

#### 5. Hate speech undermine a respectful learning environment

Reed E. **McConnell 12**, ‘15 is an editorial comper in Greenough Hall, 4-18-2012, "Why Harvard'S Hate Speech Policies Are Necessary," Harvard Crimson, <http://www.thecrimson.com/article/2012/4/18/hate-speech-libertarians/> RG [16]

There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. But there is also a need to protect people from having violence perpetrated against them. **When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech** has great power. It **can**—and often does—serve as a tool to **marginalize and oppress** people. Laws that restrict hate speech simply seek to prevent violence against marginalized, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. **When our freedom to speak** our mind **impinges on** someone’s freedom from fear, or on **someone’s right to feel safe** in their community, **then that freedom should not stand unregulated** in any group that wishes to create a safe and respectful society for its members. **We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body**, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

#### 6. Turn: Black students specifically do not want unrestricted free speech.

HBCUs = historically black colleges and universities.

Knight Foundation 16 [Knight Foundation has established endowed chairs in journalism at top universities nationwide. The chairs are leading journalists who take positions as tenured professors within academia. They practice journalism, teach innovative classes, and create experimental projects and new programs that help lead journalism excellence in the digital age.], 09-22-2016, "HISTORICALLY BLACK COLLEGE AND UNIVERSITY STUDENTS’ VIEWS OF FREE EXPRESSION ON CAMPUS" <http://www.knightfoundation.org/reports/hbcu-free-speech-campus> DOA: 01/03/16 HSLA [42]

Students in the national sample, including HBCU students, generally oppose policies that would restrict the expression of political views that could offend, but they support restrictions on slurs and wearing costumes that stereotype certain racial or ethnic groups on campus. On all of these matters, black students from non-HBCU colleges are most likely to favor restrictions. HBCU students’ level of support for banning slurs is similar to the national sample, but HBCU students show above average support for restrictions on stereotypical costumes and offensive political views.

Do you think colleges should or should not be able to establish policies that restrict each of the following types of speech or expression on campus? How about — [RANDOM ORDER]?

HBCU students Black students/non-HBCU schools All U.S. college students

Expressing political views that are upsetting or offensive to certain groups

% Yes, should be able to restrict 34 41 27

% No, should not be able to 65 59 72

Using slurs and other language on campus that is intentionally offensive to certain groups

% Yes, should be able to restrict 68 79 69

% No, should not be able to 32 21 31

Wearing costumes that stereotype certain racial or ethnic groups

% Yes, should be able to restrict 71 77 63

% No, should not be able to 28 23 37

#### This outweighs:

#### A. Aff is just a paternalistic policy telling students they don’t know what’s best for them, that shuts down critical education by denying students the chance to define the terms of their institutions [which is critical education Giroux likes]

#### B. Students are most familiar with their own conditions so they’re most likely correct for what works and what’s good for them.

#### C. people are less likely to use their free speech rights if they don’t agree with the principle of it.

#### D. epistemic humility means we should default to the perspective of the marginalized. For social justice to be possible, we must emphasize that humility educationally and socially.

INGRID ROBEYNS 7 [Chair Ethics of Institutions at Utrecht University, Faculty of Humanities and the associated Ethics Institute. Robeyns is also a Fellow of the Human Development and Capability Association.] “Epistemic humility” on NOVEMBER 7, 2013 < http://crookedtimber.org/2013/11/07/epistemic-humility/ >

A colleague who lost his teenage son due to a traffic accident 3 years ago, told us about the ‘black halo’ which remains above his head, and which only others who have lost a child are able to see. I do not doubt for a second that this is the case – that people who have not lost a child are, perhaps a very few exceptions aside, not able to truly understand w principle hat it means to lose a child, and how it changes the person you are. It reminds me of a friend who lost her father about a year after I lost mine. She had been very supportive when my father was terminally ill and died, but told me after her father died that she had no idea how hard it was until she experienced it herself. Good intentions are simply not enough to understand certain experiences [or]. I think it’s not just with experiences, but also with varieties of ‘differences’ and with social practices, being ill, and other features of human life. It is not just the death of someone near and dear that we have a hard time to understand if we haven’t experienced it ourselves; or what it means to have autism, or to live with and/or care for someone who has autism (in my experience, most people don’t understand, despite what they believe themselves about their understanding); or what it is to be constantly subjected to racism. I am confident that I have no clue what it means to grow up in abject poverty, or to live through a civil war, or to be the victim of domestic abuse. My worry is that this category of experiences, differences, practices, and other features of human life that we cannot understand without first-person experience, is much larger than we generally tend to assume. And that as a consequence, we believe that we know much more than we actually do know. And, as a further consequence, that we too often are wrong in our judgements of aspects of the lives of people significantly different than ourselves. Somehow it strikes me as wise, and possibly even as a precondition for social justice [to], if we would rehabilitate epistemic humility at the core of our educational and social practices.

#### Outweighs – the purpose of colleges…

#### 7. Speech codes don’t stop political engagement – empirics prove

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>. ] [14]

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.”

### v Discourse Affs

#### 1. Hate speech isn’t individual– it’s part of a social structure that devalues people’s dignity. Public restrictions affirm the equality of all citizens and their ability to participate in the political sphere.

Stanley **Fish 12**, professor of humanities and law at Florida International University, 6-4-2012, "The Harm in Free Speech," New York Times Opinion Pages, <http://opinionator.blogs.nytimes.com/2012/06/04/the-harm-in-free-speech/?_r=0>. Internal ellipses in original. RG [23]

But **harms to dignity**, he contends, **involve more than** the **giving** of **offense. They involve undermining a public good,** which he identifies as **the “implicit assurance” extended to every citizen that while his beliefs and allegiance may be criticized and rejected** by some of his fellow citizens, **he will** nevertheless **be viewed, even by** his polemical **opponents, as someone who has an equal right to membership** in the society. It is **the assurance** — not given explicitly at the beginning of each day but **built into the community’s mode of self-presentation** — that he belongs, that he is the undoubted bearer of a dignity he doesn’t have to struggle for. Waldron’s thesis is that **hate speech assaults that dignity** by taking away that assurance. **The very point** of hate speech, he says, “**is to negate the implicit assurance that a society offers to the members of vulnerable groups** — **that they are accepted** … as a matter of course, along with everyone else.” **Purveyors of hate** “**aim to undermine this assurance**, call it in question, **and taint it with visible expressions of hatred, exclusion and contempt**.” “Visible” is the key word. It is the visibility of leaflets, signs and pamphlets asserting that the group you belong to is un-American, unworthy of respect, and should go back where it came from that does the damage, even if you, as an individual, are not a specific target. “In its published, posted or pasted-up form, hate speech can become a world-defining activity, and those who promulgate it know very well — this is part of **their intention** — **that the visible world they create is a much harder world for the targets of their hatred to live in.**” (Appearances count.) Even though hate speech is characterized by First Amendment absolutists as a private act of expression that should be protected from government controls and sanctions, Waldron insists that “**hate speech and defamation are** actions performed in public, with a public orientation, **aimed at undermining public goods.**” That undermining is not accomplished by any particular instance of hate speech. But **just as innumerable individual automobile emissions can pollute the air, so can innumerable expressions of supposedly private hate combine to “produce a large-scale toxic effect” that operates as a “slow-acting poison.”** And since what is being poisoned is the well of public life, “**it is natural**,” says Waldron, “**to think that the law should be involved** — both in its ability to underpin the provision of public goods and in its ability to express and communicate common commitments.” After all, he reminds us, “Societies do not become well ordered by magic.”

#### Outweighs their offense – the right to membership and feeling like a part of the community is more important than the ability to express a single idea, so preserving it is key.

#### 2. Unfettered free speech leads to silencing of traditionally marginalized groups.

Garrett Deanna M. Garrett (Assistant Director Center for Student Conduct @ UVM), "Silenced Voices: Hate Speech Codes on Campus", [*https://www.uvm.edu/~vtconn/v20/garrett.html*](http://facebook.us6.list-manage.com/track/click?u=7eae7f86cf29ae45535f6b117&id=bd491baf71&e=84ca930af0) *GZ [17]*

The Silencing Effect Advocates of hate speech codes contend that the inclusion of racist, sexist, and homophobic speech serves only to silence others’ voices. "Such speech not only interferes with equal educational opportunities, but also deters the exercise of other freedoms, including those secured by the First Amendment" (Strossen, 1994, p. 193). Faced with hate speech, many individuals are silenced or forced to flee, rather than engaging in dialogue (Lawrence, 1993). In higher education, dialogue is key to learning and gaining new knowledge. Students engage in dialogue with one another, challenge each other, and propose new ideas. However, racist speech does not invite this exchange but seeks to silence non-dominant individuals. Post (1994) outlines three ways in which minority groups are silenced by hateful speech: (1) Victim groups are silenced because their perspectives are systematically excluded from the dominant discourse; (2) victim groups are silenced because the pervasive stigma of racism systematically undermines and devalues their speech; and (3) victim groups are silenced because the visceral "fear, rage, [and] shock" of racist speech systematically preempts response. (p. 143)

#### Speech happens within a social context, so this outweighs and delinks their responses – hate speech is an act that takes advantage of social context to do what words on their own usually can’t.

#### 3. Even if the aff doesn’t solve, it empowers targeted groups and spills over to larger efforts that include minorities in the conversation. Empirics prove.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [16]

It is sometimes argued that a ban on hate speech can easily become an end in itself and an excuse to avoid well-conceived antidiscrimination policies. Although this can happen, as arguably it has in France,” there is no obvious reason why it should. As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the conﬁdence to ﬁght for them by actively participating in public life.

#### 4. Even if their arguments about free speech are true in the abstract, the US needs to address centuries of mistreatment that prevent a level playing field. Prefer arguments specific to that context..

Helga Varden 10, University of Illinois at Urbana-Champaign, 5-22-2010, "A Kantian Conception of Free Speech," Freedom of Expression In A Diverse World, <http://link.springer.com/chapter/10.1007%2F978-90-481-8999-1_4> [14]

On the Kantian view I have been developing, hate speech and speech amounting to harassment are not outlawed because they track private wrongdoing as such, but rather because they track the state’s historical and current16 inability to provide some group(s) of citizens with rightful conditions of interaction. This type of public law tries to remedy the fact that some citizens have been and still are ‘more equal than others’. Hence, if the state finds that it is still unable successfully to provide conditions under which protection and empowerment of its historically oppressed, and thus vulnerable, are secured, then it is within its rightful powers to legally regulate speech and harassment to improve its ability to do so. By putting its weight behind historically oppressed and vulnerable citizens, the state seeks to overcome the problems caused by its lack of recognition in the past and its current failure to provide conditions in which its citizens interact with respect for one as free and equal. Therefore, whether or not any instance of speech actually achieves insult is inconsequential, for that is not the justification for the state’s right to outlaw it. Rather, laws regulating speech and harassment track the state’s systemic inability to provide rightful interaction for all of its citizens. Note that this argument does not, nor must it, determine which particular usages of hate speech and speech amounting to harassment should be banned. It only explains why certain kinds and circumstances of speech and harassment can and should be outlawed and why public law, rather than private law, is the proper means for doing so. Determining which types and how it should be banned is matter for public debate and reflection followed by public regulation on behalf of all citizens

#### 5. Racist speech skews our values – it prevents us from having productive discussions.

Lawrence 90 Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. GZ [13]

Blacks and other people of color are equally skeptical about the absolutist argument that even the most injurious speech must remain unregulated because in an unregulated marketplace of ideas the best ideas will rise to the top and gain acceptance. 132 Our experience tells us the opposite. We have seen too many demagogues elected by appealing to America's racism. We have seen too many good, liberal politicians shy away from the issues that might brand them as too closely allied with us. The American marketplace of ideas was founded with the idea of the racial inferiority of non-whites as one of its chief commodities, and ever since the market opened, racism has remained its most active item in trade. But it is not just the prevalence and strength of the idea of racism that makes the unregulated marketplace of ideas an untenable paradigm for those individuals who seek full and equal personhood for all. The real problem is that the idea of the racial inferiority of non-whites infects, skews, and disables the operation of the market (like a computer virus, sick cattle, or diseased wheat). Racism is irrational and often unconscious. Our belief in the inferiority of non-whites trumps good ideas that contend with it in the market, often without our even knowing it. In addition, racism makes the words and ideas of blacks and other despised minorities less saleable, regardless of their intrinsic value, in the marketplace of ideas. 136 It also decreases the total amount of speech that enters the market by coercively silencing members of those groups who are its targets.137 Racism is an epidemic infecting the marketplace of ideas and rendering it dysfunctional. Racism is ubiquitous. We are all racists. 138 Racism is also irrational. Individuals do not embrace or reject racist beliefs as the result of reasoned deliberation.139 For the most part, we do not recognize the myriad ways in which the racism pervading our history and culture influences our beliefs. In other words, most of our racism is unconscious. The disruptive and disabling effect on the market of an idea that is ubiquitous and irrational, but seldom seen or acknowledged, should be apparent. If the community is considering competing ideas about providing food for children, shelter for the homeless, or abortions for pregnant women, and the choices made among the proposed solutions are influenced by the idea that some children, families, or women are less deserving of our sympathy because they are not white, then the market is not functioning as either John Stuart Mill or Oliver Wendell Holmes envisioned it. In John Ely's terms there is a "process defect."14'

#### 6. Speech codes don’t stop political engagement – empirics prove.

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.”

## AT Solvency Turns/Preempts

### AT Indivisible [ACLU/Strossen]

#### There are tons of carved-out exceptions now – they prove a case-by-case approach is workable

Delgado and Stefancic 9 Richard Delgado University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley. Jean Stefancic – Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” WAKE FOREST LAW REVIEW. 2009. <http://wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado_LawReview_01.09.pdf> RG [13]

A. Current Free-Speech Exceptions Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence.102 If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions. First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother.103 But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. How important is it to protect a black undergraduate walking home late at night from the campus library?104 As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?105 Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.106

### AT Counter-Speech

#### Belief formation is subconscious: psychological research proves that counterspeech fails; exposure controls resolves the main cause.

Moles 6, Andrés. (Andres Moles read Philosophy at the National University of Mexico (UNAM) finishing in 2001, and received an MA in Philosophy and Social Theory (2003) and a PhD in Politics (2007) both at the University of Warwick.) Autonomy, Free Speech and Automatic Behaviour. Springer 2006. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2694982> [17]

This strategy is not without its problems. Many people who believe they are not racists still manifest racist reactions.70 It is dif- ficult to convince them that, regardless of what they think of themselves, they sometimes react as racists. Moreover, it has been shown that sometimes trying not to respond according to the stereotype has the ‘ironic effect of increasing the frequency of stereotypical reactions.71 Similarly, it has been argued that we have a tendency to believe propositions we understand, even when we are explicitly told that they are false. Daniel Gilbert argues that due to the way our system of forming beliefs works, we have a tendency automatically to accept propositions we understand. Rejection requires effort. This second step can be inhibited when individuals mental resources are depleted, for instance by devoting attention to other things, or by lack of sleep, or under torture, or time constraints. If the rejection process is interfered with, then individuals may accept propositions which they would otherwise reject.72 More, better speech seems not be able to cope with this problem, mainly because it aims at rational, conscious processes of belief formation, while the challenges I am presenting here occur at automatic, non-conscious levels. Wilson and Brekke suggest that another strategy might be more successful: exposure control. Just as in the case of normal pollution, the best way of protecting oneself is avoiding being exposed to the polluting agent; the most effective strategy to fight mental contamination could be to avoid the sources of bias. This strategy is already used in certain domains. Teachers assess anonymous essays and exams, journals impose blind controls when considering submissions, and so on. Exposure control is not free of problems; first, the main issue about who is to control what people are exposed to remains open. Second, because we cannot neutralise every source of contamination, we need to categorise the weights of different forms of contamination (racial and gender based are particularly important). Regardless of these problems, it seems that controlling exposure to the serious sources of biasing is a necessary condition for autonomy. This in turn requires that social relations are sensitive to contamination and that the exposure to sources of contamination is more or less socially controlled.

#### Outweighs – this analyzes belief formation scientifically, so it accounts for the way it actually works, not how we rationalize it.

#### Flipping the burden onto the oppressed and expecting civility that’s often not present are both disads.

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>. ] [18]

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 **firs**t 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.

#### Counterspeech fails – it ignores social embodiment, victim-blames and creates additional burdens on those it excludes

Max Pensky 14, Binghamton University, 2014, "Lois McNay; The Misguided Search For The Political: Social Weightlessness In Radical Democratic Theory," Notre Dame Philosophical Reviews, <http://ndpr.nd.edu/news/57728-the-misguided-search-for-the-political-social-weightlessness-in-radical-democratic-theory/> [13]

McNay's introductory chapter (which I've roughly summarized above) traces this logic while laying the foundations for a "disclosive" form of critical social theory as an alternative to the social weightlessness of radical democratic theory. Chapter 2, "The Unbearable Lightness of Theory," reads Chantal Mouffe's well-known theory of political agonism as the paradigmatic case of socially weightless critique. The 'primacy of the political' in Mouffe's work, for McNay, demands an ontological divide in which social existence necessarily vanishes as an object of critical attention. The anti-essentialism of Mouffe's vision of agonal politics commits her to a kind of celebration of the political, as the privileged realm in which alone agency is possible. Agency, in turn, is consistently to be thought in terms of self-creation. And the passionate agency of individual and collective self-creation is ultimately the model for radical democratic politics, in which oppressed and marginalized groups contest the terms of their exclusion by radically re-imagining, challenging, and re-forming the terms of their political identity. ¶ Which all sounds fine, I suppose, unless those oppressed and marginalized people weren't feeling quite so exhausted, footsore, frustrated, and depressed. Here of course McNay confronts a difficult but persistent antinomy, which her study generally approaches with tact and insight. On the one hand, there is something undeniably wrong, both descriptively and normatively, with a political theory of radical democracy so willfully blind to the nature and depth of social suffering that it fails to register how it might simply not be plausible to claim one's political agency, as if one could simply step out of one's entrapment in a vicious circle of social suffering like leaving a bad restaurant. This kind of insensitivity is tantamount to an additional burden on the poor, who are now, at least implicitly, blameworthy for not stepping into the rarified arena of political agonism. Abstraction is a choice -and a wrong choice politically. On the other hand, there is an opposite and complementary kind of mistake in thinking of poverty and social misery as inevitably connected in every circumstance, which threatens to evaporate the normative purpose of critical social theory and turn it into little more than a catalogue of misfortune. While Mouffe's abstractions badly overestimate the real capacities of oppressed and dominated people to become political agents, there is a complementary underestimation of the possibility of any agency at all. Disclosive critique à la Honneth is meant to situate itself in the space between these alternatives.

#### International consensus is that counterspeech is ineffective solution – it doesn’t help those targeted.

Tsesis 10 Alexander Tsesis (Faculty Loyola University, Chicago, School of Law), "Burning Crosses on Campus: University Hate Speech Codes.", 43 Connecticut Law Review 617 (2010), [*lawecommons.luc.edu/cgi/viewcontent.cgi?article=1125&context=facpubs*](http://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1125&context=facpubs)GZ [18]

The notion that counterspeech will adequately combat group hatred and promote civil liberties, and is sufficient to maintain tolerance on campus, which Nadine Strossen and the ACLU have advanced,276 has been roundly rejected by the international community. 277 The U.S. Supreme Court has now endorsed the consensus perspective on free speech policy. Just as with sexual harassment in the workplace, counterspeech is an inadequate remedy for the direct, intimidating attack of hate speech.278 Racism, chauvinism, ethnocentrism, and xenophobia are too deeply embedded in culture to be changed overnight. While public attitudes are being changed, hate speech continues to menace out-groups. Telling a university employee subject to racial or sexual coercion, racial degradation, or ethnic insults to simply respond to antagonists provides victims no legal redress but mere platitudes. Just as responding to comments in a hostile environment does not solve the problem of workplace harassment, neither does counterspeech decrease the risk posed by advocacy groups committed to carrying out a campus campaign of group intimidation, exclusion, and discrimination. Expecting students at public universities to simply talk things out and convince those who intimidate them of the fallacy of their threatening words and behaviors fails to provide a procedurally cognizable way of seeking legal redress.

### AT Social Change

#### Their faith in direct action is ahistorical: dialogue with the oppressor has never changed anything.

Tillett-Saks 13Andrew Tillett-Saks (Labor organizer and critical activist author for Truth-Out and Counterpunch), Neoliberal Myths, Counterpunch, 11/7/13, http://www.counterpunch.org/2013/11/07/neoliberal-myths/ [17]

In the wake of the Brown University shout-down of Ray Kelly, champion of the NYPD’s racist stop-and-frisk policy and racial profiling in general, the debate has resurfaced. Rather than talking past the anti-protestors’ arguments, they need to be addressed directly. The prototypical argument in denouncing the protestors is not a defense of Ray Kelly’s racism. It is twofold: First, that a free-flowing discourse on the matter will allow all viewpoints to be weighed and justice to inevitably emerge victorious on its merits. Second, that stopping a bigot from speaking in the name of freedom is self-defeating as it devolves our democratic society into tyranny. The twofold argument against the protestors stems from two central myths of neoliberalism. The argument for free discourse as the enlightened path to justice ignores that direct action protest is primarily responsible for most of the achievements we would consider ‘progress’ historically (think civil rights, workers’ rights, suffrage, etc.), not the free exchange of ideas. The claim that silencing speech in the name of freedom is self-defeating indulges in the myth of the pre-existence of a free society in which freedom of speech must be preciously safeguarded, while ignoring the woeful shortcomings of freedom of speech in our society which must be addressed before there is anything worth protecting. Critics of the protest repeatedly denounced direct action in favor of ideological debate as the path to social justice. “It would have been more effective to take part in a discussion rather than flat out refuse to have him speak,” declared one horrified student to the Brown Daily Herald. Similarly, Brown University President Christina Paxson labeled the protest a detrimental “affront to democratic civil society,” and instead advocated “intellectual rigor, careful analysis, and…respectful dialogue and discussion.” Yet the implication that masterful debate is the engine of social progress could not be more historically unfounded. Only in the fairy tale histories of those interested in discouraging social resistance does ‘respectful dialogue’ play a decisive role in struggles against injustice. The eight-hour workday is not a product of an incisive question-and-answer session with American robber barons. Rather, hundreds of thousands of workers conducted general strikes during the nineteenth century, marched in the face of military gunfire at Haymarket Square in 1886, and occupied scores of factories in the 1930’s before the eight-hour work day became American law. Jim Crow was not defeated with the moral suasion of Martin Luther King, Jr.’s speeches. Rather, hundreds of thousands marched on Washington, suffered through imprisonment by racist Southern law enforcement, and repeatedly staged disruptive protests to win basic civil rights. On a more international scale, Colonialism, that somehow-oft-forgotten tyranny that plagued most of the globe for centuries, did not cease thanks to open academic dialogue. Bloody resistance, from Algeria to Vietnam to Panama to Cuba to Egypt to the Philippines to Cameroon and to many other countries, was the necessary tool that unlocked colonial shackles. Different specific tactics have worked in different contexts, but one aspect remains constant: The free flow of ideas and dialogue, by itself, has rarely been enough to generate social progress. It is not that ideas entirely lack social power, but they have never been sufficient in winning concessions from those in power to the oppressed. Herein lies neoliberal myth number one—that a liberal free-market society will inexorably and inherently march towards greater freedom. To the contrary, direct action has always proved necessary.

#### The marketplace of ideas is terrible – government influence creates a chilling effect, it acts as a palliative for broader reform, and shuts dissent into endless debate instead of action – the aff opens a procedural can of worms that makes change impossible.

Inbger 84 Stanley Ingber, THE MARKETPLACE OF IDEAS: A LEGITIMIZING MYTH, Duke Law Review, February 1984 EE [28]

The clear and present danger test presupposes that market imperfections sometimes give speakers an unacceptable level of advantage in influencing others. Because information opposing the speaker's viewpoint cannot be transmitted instantaneously to all market participants, the real market substantially departs from the theoretical one.80 Therefore, emergency situations are exempted from first amendment coverage. As long as sufficient time remains for the marketplace's process of deliberation to persist, however, and as long as lawless action is not imminent, no emergency exists and all speech must be protected. Yet the goal of free speech is not merely to have citizens enjoy participating in an effete truth-seeking process. Instead, citizens seek truth through free speech precisely to influence choice and behavior. Recognizing that beliefs are important primarily because those who hold them are likely to act accordingly, Holmes conceded that "every idea is an incitement. '81 Ironically, however, Holmes's "clear and present danger" formula allows government officials to prohibit expression precisely when such speech threatens to incite action.82 An interpretation of the first amendment that permits the state to cut off expression as soon as it comes close to being effective essentially limits the amendment's protection to encompass only abstract or innocuous communication. 83 Consequently, speech is constitutionally protected under the clear and present danger test as long as it is either ineffective84 or insignificant. 85 In either instance the test creates an establishment bias. Other factors peculiar to the clear and present danger test accentuate this bias. The test is both ad hoc and vague. Speakers receive no warning whether their contemplated speech extends beyond the parameters of constitutional protection. The test is totally contextual, giving little guidance to either the speaker or the official censor who must predict the impact of the expression. 6 For the speaker, this lack of notice fosters continuous uncertainty and thus may chill a risk-averse speaker who desires to minimize his personal legal peril.87 Such a person may censor himself by intentionally avoiding those messages he perceives as approaching the fringe of official acceptability. The official, in turn, must decide when the expression is clearly dangerous and when insufficient time exists for a full and fair hearing of responsive expression that would allow good counsel to defeat bad.88 The censor's evaluation involves a two-tiered decision. First, the official must evaluate the speech ideologically to determine whether it is good or evil, because if the speech is good the lack of sufficient time for response is irrelevant. 89 But under the market model, only the marketplace can accurately separate good from evil; therefore, no criteria can exist to determine whether speech is sufficiently evil to warrant exclusion from the market. Second, the official must calculate the seriousness of the speech's evil, because the market requires greater response time for more serious evils. This requirement forces the official to differentiate without any guidelines between evil counsel that is about to lead an insufficiently educated public astray, and good counsel that merely has convinced an adequately informed public of its "rightness." Under a test with such elasticity, speakers who proclaim any radical political doctrine may expect to receive little or no protection because they will always appear as a threat to the nation and, thus, embody the most serious of all possible evils. 90 The establishment bias is again obvious. The clear and present danger test also encourages prolonging debate indefinitely. According to Brandeis, expression may not be prohibited so long as debate remains ongoing. 91 Thus, only the process of truth-seeking is fully protected; decisions and actions predicated upon truths once discovered are protected not at all.92 Brandeis's approach to the marketplace of ideas accordingly encourages prolonged discussion and, therefore, the delay of decisions that might lead to actions contrary to society's generally accepted "truths." There is, however, little value in the discovery of truth that cannot be used as a basis of choice and behavior. Brandeis's focus on procedural aspects of the market rather than on the substantive actions it triggers also fosters delay in implementing any ideas that challenge the status quo perspective. Disputes over the best solutions for societal problems are converted into disputes over proper marketplace processes. For example, rather than focusing on whether the military draft should be reinstated, the debate may well center on whether antidraft groups should be allowed to stage a massive demonstration in a business district. Such procedural concerns divert attention from the substantive issue so that the status quo is more easily preserved. Through this process of transforming substantive conflicts into procedural debates, challengers to the status quo may be placated with a procedural victory while their overt threat is defused.93 This shift in focus helps to insulate society from the trauma of having to reconsider its accepted values while at the same time it allows the protesting individual and his supporters to believe that they have a fair opportunity to win popular support for their position.94 If freedom of expression only gives protection as long as decisions are not yet made, actions are not yet taken, and debate is still in progress, then there is little threat to established norms

### AT Reverse Enforcement

#### 1. 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 [15]

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 countries.67 The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.

#### 2. Context matters – colleges are more liberal spaces now than ever – your examples are from ages ago and from national regulations, not those enforced by colleges themselves, who aren’t going to use them against minorities.

#### 3. Terminally nonunique.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [7]

The danger that the ban can be misused is real, but that does not undermine the case for it. It is interesting that the African National Congress, which had suffered much from such an abuse under the apartheid regime, continued with the ban on hate speech in a suitably revised form on establishing a democratic South Africa. Many laws, including those relating to public order and national security, are open to abuse, but that does not mean that we should dispense with them. Furthermore, repressive governments can easily invoke all kinds of familiar reasons to justify suppression of dissenting movements and minority protests. No doubt a ban on hate speech provides them with one legitimizing reason, but it is not the only one and its absence would not make any difference to their actions.

#### 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/> // [7]

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 Martyrdom Effect

#### 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] **[12]**

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 confidential 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.

#### Bans force the organizations underground which means no martyrdom effect: most people don’t want to be associated with them and they can’t go public.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [13]

It is sometimes argued that banning hate speech drives extremist groups underground 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. Howeyer, 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 themselves 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 alienation 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.

### AT Drive it Underground

#### 1. Driving it underground means that people aren’t using it as an act of aggression against traditionally excluded groups: this is offense for me.

#### 2. Official permission leads to worse future instances and gets people who otherwise wouldn’t have to get involved.

Delgado and Stefancic 9 Richard Delgado University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley. Jean Stefancic – Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” WAKE FOREST LAW REVIEW. 2009. http://wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado\_LawReview\_01.09.pdf RG [10]

What about harm to the hate speaker? The individual who holds his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage.91 Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result.92 By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.93 But studies examining this possibility discount it.94 Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result. The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit.95 A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97

#### 3. Extreme members may persist but restrictions make moderate members disassociate – this is net better.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [14]

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#### 4. Creating a sense of shame around that speech is good and improves public discourse

Ezra Klein 16, American journalist, author, and political commentator, 2-10-2016, "The rise of Donald Trump is a terrifying moment in American politics," Vox, <http://www.vox.com/2016/2/10/10956978/donald-trump-terrifying> [12]

Trump's other gift — the one that gets less attention but is perhaps more important — is his complete lack of shame. It's easy to underestimate how important shame is in American politics. But shame is our most powerful restraint on politicians who would find success through demagoguery. Most people feel shame when they're exposed as liars, when they're seen as uninformed, when their behavior is thought cruel, when respected figures in their party condemn their actions, when experts dismiss their proposals, when they are mocked and booed and protested. Trump doesn't. He has the reality television star's ability to operate entirely without shame, and that permits him to operate entirely without restraint. It is the single scariest facet of his personality. It is the one that allows him to go where others won't, to say what others can't, to do what others wouldn't. Trump lives by the reality television trope that he's not here to make friends. But the reason reality television villains always say they're not there to make friends is because it sets them apart, makes them unpredictable and fun to watch. "I'm not here to make friends" is another way of saying, "I'm not bound by the social conventions of normal people." The rest of us are here to make friends, and it makes us boring, gentle, kind.

### AT Trump/Alt Right

#### 1. Massively non-unique—TRUMP IS PRESIDENT. Their presence on college campuses isn’t the basis of the movement or something they need to validate them. He and Bannon already have a microphone.

#### 2. Turn: Bans inhibit the alt right: right now, they use their veneer of respectability and can recruit publically.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.] [12]

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#### 3. Turn: the alt-right exploits free speech to attract supporters.

Burley 16Burley, Shane Contributor, Waging Nonviolence “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” Waging Nonviolence. October 2016. GZ [25]

A murmur began in May around Berkeley and the surrounding Bay Area as posters appeared overnight on the sides of buildings and wrapped on poles. Adorned with images of statues of antiquity, these classical images of European men depicted as gods were intended to light a spark of memory in the mostly white faces that passed by them. With lines like “Let’s become great again” printed on them, the posters were blatant in their calls for European “pride,” clearly connecting romanticized European empires of the past to the populism of Donald Trump today. The posters were put up by Identity Europa, one of the lesser-known organizations amid that esoteric constellation of reactionary groups and figures known as the “Alt Right.” They were part of a campaign around the country enticing college-age white people to join a new kind of white nationalist movement. While similar posters emerged elsewhere on the West Coast and Midwest, in central California they pointed toward a public event — one directed specifically toward the tradition of free speech at the University of California at Berkeley. Shortly after the posters went up, a brief announcement came from Alt Right leader Richard Spencer and his think-tank, the National Policy Institute. They, along with Identity Europa and other white nationalist organizations, were planning to hold an “Alt Right Safe Space” in Berkeley’s Sproul Plaza on May 6. The “safe space” is a play on words for the Alt Right, using the phrase that many leftist-oriented facilities use for a code of conduct that bans oppressive or bigoted behavior. Instead, they intended to make a “safe space” for white racism, the public declaration of which has become unwelcome in most any space. The plan was to show up and publicly proselytize on the problems of multiculturalism and the need for “white identity.” Identity Europa founder Nathan Damigo joined Spencer, along with Johnny Monoxide, a podcaster and blogger from the white nationalist blog The Right Stuff, which has become popular in Internet racialist circles (racialist being a term they use, since racist carries a negative connotation) for its internal lingo and open use of racial slurs. Alt Right media outlet Red Ice Creations teamed up with Monoxide to livestream the event, bringing the white nationalist crowd together with their international audience of conspiracy theorists, anti-vaccine activists and [alternative religion](http://www.vice.com/read/how-a-thor-worshipping-religion-turned-racist-456) proponents. While live streaming to their crowd, they came ready to argue. “This guy’s anti-dialogical! He’s anti-white,” yelled Damigo when challenged on the racialist content of his talking points. Race and identity For decades, both the institutional and radical left in the United States has relied on campus activism as a key part of its organizing base. From the antiwar movement of the 1960s to the development of feminist and queer politics to the growing youth labor and Black Lives Matter movement, colleges have been a center for political encounters and mobilizations. The radicalization of students has often leaned to the left because the left’s challenges to systems of power seem like a perfect fit for people expanding their understanding of the world. Amid major shifts in U.S. politics, a space has opened for revolutionary right-wing politics that have not traditionally been accessible to those outside of the most extreme ranks of the white nationalist movement. Today, the Alt Right is repackaging many of the ideas normally associated with neo-Nazis and KKK members into a new, more middle-class culture by using the strategies and language traditionally associated with the left. This means a heavy focus on argumentation and academic legitimacy, as well as targeting campus locations (and millennials) for recruitment. Until Hillary Clinton’s August 21 speech, most people had never heard of the Alt Right. However, it is a movement that has been growing for almost a decade in backroom conferences and racially-charged blogs. It is a kind of cultural fascism, one birthed out of the post-war fascist movements of Europe and given character by a culture of Twitter trolls and populist American anger. Yet, when it appears on campus, the Alt Right’s recruiting is hardly different from the Klan’s attempts to openly recruit members by leaving bags of leaflets and candy at people’s doorsteps. While the Alt Right Safe Space was put together as a joint effort with several nationalist organizations, Identity Europa emphasizes focusing on the youth most of all. The name and branding of Identity Europa are new, but the organization was started years ago as the National Youth Front. Nathan Damigo was an Iraq war veteran going to school at the University of California at Stanislaus when he took over the organization, shifting its ideological orientation from “civic nationalism” to “race realism,” the notion that whites have higher average IQ’s and a smaller propensity for crime than blacks. While Damigo notes that they have a “don’t ask, don’t tell” policy when it comes to gay members, he said that bi-racial and transgendered people would be turned away. For Damigo and others who trade in white nationalist talking points like “race realism,” the differences between races are significant. “Ethnic and racial or religious diversity can actually wreak havoc on a social system, and cause tons of problems,” Damigo said. “I do believe that there are differences between human populations … [T]he distribution of genes that affect behavior and intelligence are already known to not be equally distributed between all populations.” Identity Europa then represents a sort of “fraternal organization” where “European-descended” people can meet and network, working their way towards a kind of campus activism that challenges discourse and educational plans embedded with multiculturalism and egalitarianism. Such organizations have a long history on the right, stretching back to the 19th century fencing clubs and fraternities that popularized the pan-German ideas of Georg Schönerer — an immediate influence on Nazism. As organizers, however, Identity Europa do not follow the standard playbook for campus activism, which usually involves breaking broad political ideas into organized demands with reachable goals. Instead, they simply want to cultivate a subculture whose constituents will intervene in public discourse, thereby seeding their well-rehearsed talking points about racial inequality, white sovereignty and the return to heteronormative social roles. While Damigo brags about the growth of Identity Europa, it likely does not have membership beyond a few dozen people on campuses around the country at this point. However, there are reports of Identity Europa posters appearing at different places around the country almost weekly**.** Outreach to millennials Through its brand of social interruption, Identity Europa intends to foment a revolutionary right-wing culture — precisely the goal shared by Richard Spencer and his National Policy Institute. Spencer has been in right-wing politics for years, first joining as an assistant editor at the American Conservative after an article he published on the Duke Lacrosse sexual assault scandal made him a minor star. He later went to the controversial Taki’s Magazine, known for giving a voice to the shrinking paleoconservative movement and staffing dissident voices from the right who are regularly accused of racism. As he further cemented himself in this “dissident right” world, he developed the term “Alternative Right” to indicate the different strands that he saw uniting against multiculturalism, equality and American democracy. It was in this climate that Spencer founded the website Alternative Right, giving voice to a growing white nationalist movement that built on fascist intellectual traditions in Western Europe and challenged the right-wing connection to the American conservative movement. He eventually went on to take over the white nationalist think-tank, the National Policy Institute, or NPI, originally founded by William Regnery, using money inherited from the conservative publishing house, Regnery Publishing. The organization was meant to center on Samuel Francis, a former columnist with the Washington Timeswho was let go as he shifted further into white nationalism and associated with racialist organizations like American Renaissance and the Council of Conservative Citizens. Spencer took over the organization after Francis’s death, molding it into the intellectual core of the growing Alt Right movement. Spencer’s goal has always been the creation of a “meta-political” movement rather than one founded on contemporary political wedge issues. He hopes to draw together ideas like “white identitarianism” — a term used to brand the movement as being about European heritage — and the eugenics-invoking “human biodiversity.” Both are terms fostered by the so-called “European New Right” and its leading ideologues. What immediately distinguished Spencer’s role in the white nationalist movement from the older generation was his explicit focus on millennial outreach. For instance, his expensive NPI conferences are dramatically discounted for those under 30, and his new Radix Journal is marketed directly to an Internet culture of disaffected and angry white youths. He was an early proponent of podcasts as a main voice of the movement, a move that has given the Alt Right its conversational tone and made its ideas more accessible. With Damigo, Spencer developed the Alt Right Safe Space idea to exploit the projection of free speech on college campuses, despite the movement’s general rejection of human rights. “I think it’s symbolic as a way of saying, ‘we’re here,’” Spencer explained.

## Hate Speech Turn

### Physical Harms

#### Hate Speech should be banned – the harms are cumulative, physical and transgenerational – it hurts its victims and primes society for mass oppression.

Delgado and Stefancic 9 Richard Delgado University Professor, Seattle University School of Law; J.D., 1974, University of California, Berkeley. Jean Stefancic – Research Professor, Seattle University School of Law; M.A., 1989, University of San Francisco. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” WAKE FOREST LAW REVIEW. 2009. <http://wakeforestlawreview.com/wp-content/uploads/2014/10/Delgado_LawReview_01.09.pdf> GZ

II. OBSERVATION NUMBER TWO: THE EVALUATION OF HARMS HAS BEEN INCOMPLETE One way, of course, to end the current standoff is for one of the parties to defer to the other’s point of view. Indeed, by pursuing an aggressive campaign of litigation, the free-speech camp has been implicitly urging that the other side do just that.58 One could also argue that a host of campus administrators, by enacting successive versions of hate-speech codes, are attempting to do the same thing, namely, wear the other side down.59 Ordinarily, though, it is the free-speech faction, with a string of lower-court victories to its credit, who urge the other side to “get over it” and toughen its collective hide.60 Yet, a careful weighing of the costs and benefits of speech regulation suggests that the case for it is closer than the ACLU and some courts seem ready to acknowledge. Before addressing the costs of hate-speech regulation versus the opposite, it is advisable to arrive at an understanding of what hate speech is. A Types of Hate Speech Hate speech, including the campus variety, can take a number of forms—direct (sometimes called “specific”) or indirect; veiled or overt; single or repeated; backed by power, authority, or threat, or not.61 One can also distinguish it in terms of the characteristic— such as race, religion, sexual orientation, immigration status, or gender—of the person or group it targets.62 It can isolate a single individual (“Jones, you goddamned X.”) or group (“The goddamned Xs are destroying this country.”). It can be delivered orally, in writing, on the Internet, or in the form of a tangible thing, such as a Confederate flag, football mascot, or monument.63 It can be anonymous, as with graffiti or a leaflet surreptitiously placed on a bulletin board or under a dormitory door, or its author can be plainly identified.64 The object of the speech may be free to leave, or trapped, as in a classroom or workplace.65 B. The Harms of Hate Speech The various forms of hate speech present different kinds and degrees of harm. The face-to-face kind is the most immediately problematic, especially if the target is not in a position to leave and the one delivering it possesses the power to harm. 1. Direct or Face-to-Face Hate Speech Although some courts and commentators describe the injury of hate speech as mere offense,66 the harm associated with the face-to-face kind, at least, is often far greater than that and includes flinching, tightening of muscles, adrenaline rushes, and inability to sleep.67 Some victims may suffer psychosocial harms, including depression, repressed anger, diminished self-concept, and impairment of work or school performance.68 Some may take refuge in drugs, alcohol, or other forms of addiction, compounding their misery.69 2. Hate Speech and Children With children, the harms of hate speech may be even more worrisome. A child victimized by racial taunts or browbeating may respond aggressively, with the result that he or she is labeled as assaultive.70 Or, the child can respond by internalizing the harm and pretending to ignore it. Robbed of self-confidence and a sense of ease, such a child can easily become introspective and morose.71 If the child’s parents suffer the same fate at work, they may bring these problems home so that the parents retain even less energy for their families than before.72 Recent scholarship points out how the pathologies associated with social subordination may be transgenerational, lasting for centuries, if not millennia, and include pain, fear, shame, anger, and despair.73 3. General Hate Speech With general hate speech, such as anonymously circulated flyers or speeches to a crowd, the harms, while diffuse, may be just as serious.74 Recent scholarship shows how practically every instance of genocide came on the heels of a wave of hate speech depicting the victims in belittling terms.75 For example, before launching their wave of deadly attacks on the Tutsis in Rwanda, Hutus in government and the media disseminated a drumbeat of messages casting their ethnic rivals as despicable.76 The Third Reich did much the same with the Jews during the period leading up to the Holocaust.77 When the United States enslaved African Americans and killed or removed the Indians, it rationalized that these were simple folk who needed discipline and tutelage, or else bloodthirsty savages who resisted the blessings of civilization.78 When, a little later, the nation marched westward in pursuit of manifest destiny, it justified taking over the rich lands of California and the Southwest on the ground that the indolent Mexicans living on them did not deserve their good fortune.79 Before interning the Japanese during World War II, propagandists depicted the group as sneaky, suspicious, and despotic.80 It is possible that the connection between general hate speech and instances of mass oppression may not be merely statistical and contingent, but conceptual and necessary.81 Concerted action requires an intelligible intention or rationale capable of being understood by others. One cannot mistreat another group without first articulating a reason why one is doing it—otherwise, no one but a sadist would join in.82 Without a softening-up period, early steps toward genocide, such as removing Jews to a ghetto, would strike others as gratuitous and command little support. Discriminatory action of any kind presupposes a group that labors under a stigma of some kind.83 The prime mechanism for the creation of such stigma is hate speech.84 Without it, genocide, imperialism, Indian removal, and Jim Crow could gain little purchase.85 C. The Harms of Speech Regulation If the harms of hate speech are sobering, what lies on the other side? What happens to the hate speaker forced to hold things in? Will he or she suffer psychological injury, depression, nightmares, drug addiction, and a blunted self image?86 Diminished pecuniary and personal prospects?87 Will hate-speech regulation set up the speaker’s group for extermination, seizure of ancestral lands, or anything comparable?88 The very possibility seems far-fetched. And, indeed, regimes, such as Europe’s and Canada’s, that criminalize hate speech exhibit none of these ills.89 Speech and inquiry there seem as free and uninhibited as in the United States, and their press just as feisty as our own.90 What about harm to the hate speaker? The individual who holds his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage.91 Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result.92 By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.93 But studies examining this possibility discount it.94 Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result. The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit.95 A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97 III. OBSERVATION NUMBER THREE: INTEREST BALANCING MUST TAKE ACCOUNT OF RELEVANT FEATURES OF HATE SPEECH If all types of hate speech are apt to impose costs,98 large or small, how should courts and policymakers weigh them? Not every victim of hate speech will respond in one of the ways described above. Some will shrug it off or lash back at the aggressor, giving as good as they got.99 The harm of hate speech is variable, changing from victim to victim and setting to setting.100 By the same token, it is impossible to say with assurance that the cost of hate-speech regulation will always be negligible. Some speakers who might wish to address sensitive topics, such as affirmative action or racial differences in response to medical treatments, might shy away from them.101 The interplay of voices that society relies on to regulate itself may deteriorate. In balancing hate speech versus regulation, two benchmarks may be helpful: a review of current freespeech “exceptions” and attention to the role of incessancy. A. Current Free-Speech Exceptions Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence.102 If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions. First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother.103 But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. How important is it to protect a black undergraduate walking home late at night from the campus library?104 As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?105 Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.106 B. Incessancy and Compounding Two final aspects of hate speech are incessancy—the tendency to recur repeatedly in the life of a victim—and compounding.107 A victim of a racist or similar insult is likely to have heard it more than once. In this respect, a racial epithet differs from an insult such as “You damn idiot driver” or “Watch where you’re going, you klutz” that the listener is apt to hear only occasionally. Like water dripping on stone, racist speech impinges on one who has heard similar remarks many times before.108 Each episode builds on the last, reopening a wound likely still to be raw. The legal system, in a number of settings, recognizes the harm of an act known to inflict a cumulative harm. Ranging from eggshell plaintiffs to the physician who fails to secure fully informed consent, we commonly judge the blameworthiness of an action in light of the victim’s vulnerability.109 When free-speech absolutists trivialize the injury of hate speech as simple offense, they ignore how it targets the victim because of a condition he or she cannot change and that is part of the victim’s very identity. Hate speakers “pile on,” injuring in a way in which the victim has been injured several times before. The would-be hate speaker forced to keep his thoughts to himself suffers no comparable harm. A comparison of the harms to the speaker and the victim of hate speech, then, suggests that a regime of unregulated hate speech is costly, both individually and socially. Yet, even if the harms on both sides were similar, one of the parties is more disadvantaged than the other, so that Rawls’s difference principle suggests that, as a moral matter, we break the tie in the victim’s favor.110 Moreover, the magnitude of error can easily be greater, even in First Amendment terms, on the side of nonregulation. Hate speech warps the dialogic community by depriving its victims of credibility. Who would listen to one who appears, in a thousand scripts, cartoons, stories, and narratives as a buffoon, lazy desperado, or wanton criminal? Because one consequence of hate speech is to diminish the status of one group vis-à-vis all the rest, it deprives the singled-out group of credibility and an audience, a result surely at odds with the underlying rationales of a system of free expression.111

#### Public tolerance of hate speech is bad and official affirmation that they deserve equal treatement matters.

Matsuda 89 Matsuda, Mari. Associate Professor of Law, University of Hawaii “Public Response to Racist Speech: Considering the Victim’s Speech.” Michigan Law Review, Volume 87, August 1989 GZ

Racist hate messages are rapidly increasing and are widely distributed in this country using a variety of low and high technologies.82 The negative effects of hate messages are real and immediate for the victims.83 Victims of vicious hate propaganda have experienced physiological symptoms and emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide.84 Professor Patricia Williams has called the blow of racist messages "spirit murder" in recognition of the psychic destruction victims experience.85 Victims are restricted in their personal freedom. In order to avoid receiving hate messages, victims have had to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and demeanor.86 The recipient of hate messages struggles with inner turmoil. One subconscious response is to reject one's own identity as a victimgroup member.87 As writers portraying the African-American experience have noted, the price of disassociating from one's own race is often sanity itself.88 As much as one may try to resist a piece of hate propaganda, the effect on one's self-esteem and sense of personal security is devastating.89 To be hated, despised, and alone is the ultimate fear of all human beings. However irrational racist speech may be, it hits right at the emotional place where we feel the most pain. The aloneness comes not only from the hate message itself, but also from the government response of tolerance. When hundreds of police officers are called out to protect racist marchers,90 when the courts refuse redress for racial insult, and when racist attacks are officially dismissed as pranks, the victim becomes a stateless person. Target-group members can either identify with a community that promotes racist speech, or they can admit that the community does not include them. The effect on non-target-group members is also of constitutional dimension. Associational and other liberty interests of whites are curtailed by an atmosphere rife with racial hatred.91 In addition, the process of dissociation can affect their mental health. Dominant-group members who rightfully, and often angrily, object to hate propaganda share a guilty secret: their relief that they are not themselves the target of the racist attack. While they reject the Ku Klux Klan, they may feel ambivalent relief that they are not African-American, Asian, or Jewish. Thus they are drawn into unwilling complacency with the Klan, spared from being the feared and degraded thing. Just as when we confront human tragedy a natural disaster, a plane crash we feel the blessing of the fortunate that distances us from the victims, the presence of racist hate propaganda distances right-thinking dominant-group members from the victims, making it harder to achieve a sense of common humanity. Similarly, racist propaganda forces victim-group members to view all dominant-group members with suspicion.92 It forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders.93 This is one reason why social relations across racial lines are so rare in America. Research in psychosocial94 and psycholinguistic95 analysis of racism suggests a related effect of racist hate propaganda: at some level, no matter how much both victims and well-meaning dominant-group members resist it, racial inferiority is planted in our minds as an idea that may hold some truth.96 The idea is improbable and abhorrent, but it is there before us, because it is presented repeatedly. "Those people" are lazy, dirty, sexualized, money-grubbing, dishonest, inscrutable, we are told.97 We reject the idea, but the next time we sit next to one of "those people" the dirt message, the sex message, is triggered.98 We stifle it, reject it as wrong, but it is there, interfering with our perception and interaction with the person next to us.99 For the victim, similarly, the angry rejection of the message of inferiority is coupled with absorption of the message. When a dominant-group member responds favorably, there is a moment of relief the victims of hate messages do not always believe in their insides that they deserve decent treatment. This obsequious moment is degrading and dispiriting when the self-aware victim acknowledges it.100 Psychologists and sociologists have done much to document the effects of racist messages on both victims and dominant-group members.?10 Writers of color have given us graphic portrayals of what life is like for victims of racist propaganda.102 From the victim's perspective103 racist hate messages cause real damage.1

#### Official tolernance sends a harmful lesson – it empowers perpetrators and alienates victims.

Matsuda 89 Matsuda, Mari. Associate Professor of Law, University of Hawaii “Public Response to Racist Speech: Considering the Victim’s Speech.” Michigan Law Review, Volume 87, August 1989 GZ

Official tolerance of racist speech in this setting is more harmful than generalized tolerance in the community-at-large. It is harmful to student perpetrators in that it is a lesson in getting-away-with-it that will have lifelong repercussions. It is harmful to targets, who perceive the university as taking sides through inaction, and who are left to their own resources in coping with the damage wrought.250 Finally, it is a harm to the goals of inclusion, education, development of knowledge, and ethics that universities exist and stand for.251 Lessons of cynicism and hate replace lessons in critical thought and inquiry. The campus free speech issues of the Vietnam era,252 and those evoked by the anti-apartheid movement, pit students against university administrators, multinational corporations, the U.S. military, and established governments. In the context of that kind of power imbalance, the free speech rights of students deserve particular deference. Unfortunately, as we know from the memory of four dead in Ohio, that deference is not always forthcoming. Racist speech on campus occurs in a vastly different power context. Campus racism targets minority students and faculty. Minority students often come to the university at risk academically, socially, and psychologically.253 Minority faculty are typically untenured, overburdened, isolated, or even nonexistent, as is the case at several law schools.254 The marginalized position of minority faculty further marginalizes minority students. There is legal precedent for considering the status of the target in measuring the amount of freedom verbal attackers enjoy. In the law of defamation, private figures can more easily obtain damages for harm to their reputation than can public figures. This is based on the greater ability of public figures to launch an effective rebuttal and on their voluntary choice to enter the public eye. An additional implicit justification is that wealth, power, and fame provide ego support that helps one weather verbal abuse. If nothing else, the defamed movie star can retreat to Malibu. The student, like the private figure, has fewer avenues of retreat. Living on or near campus, studying in the library, and interacting with fellow students are integral parts of university life.255 When racist propaganda appears on campus, target-group students experience debilitated access to the full university experience. This is so even when hate propaganda is directed at groups rather than individuals.256 Students are analogous to the captive audience that is afforded special first amendment consideration in other contexts.257 Similarly, students who support universities through tuition and who are encouraged to think of the university as their home are involuntarily forced into a position of complicity with racism when their campus is offered to hate groups as a forum.

#### Psych viol.

Matsuda 89 Matsuda, Mari. Associate Professor of Law, University of Hawaii “Public Response to Racist Speech: Considering the Victim’s Speech.” Michigan Law Review, Volume 87, August 1989 GZ

The claim that a legal response to racist speech is required stems from a recognition of the structural reality of racism in America. Racism, as used here, comprises the ideology of racial supremacy and the mechanisms for keeping selected victim groups in subordinated positions.67 The implements of racism include:68 1. Violence and genocide; 2. Racial hate messages, disparagement, and threats; 3. Overt disparate treatment; and 4. Covert disparate treatment and sanitized racist comments. In addition to physical violence, there is the violence of the word.69 Racist hate messages, threats, slurs, epithets, and disparagement all hit the gut of those in the target group. The spoken message of hatred and inferiority is conveyed on the street, in schoolyards, in popular culture and in the propaganda of hate widely distributed in this country.70 Our college campuses have seen an epidemic of racist incidents in the 1980s.71 The hate speech flaring up in our midst includes insulting nouns for racial groups, degrading caricatures, threats of violence, and literature portraying Jews and people of color as animal-like and requiring extermination.7 While violence and hate propaganda are officially renounced by elites,73 other forms of racism are not.74 Jim Crow, which persists today in the form of private clubs and de facto segregated schools and neighborhoods, is seen as less offensive than cross burnings. Covert disparate treatment and sanitized racist comments are commonplace and socially acceptable in many settings.75 The various implements of racism find their way into the hands of different dominant-group members. Lowerand middle-class white men might use violence against people of color, while upper-class whites might resort to private clubs or righteous indignation against "diversity" and "reverse discrimination."76 Institutions government bodies, schools, corporations also perpetuate racism through a variety of overt and covert means.77 From the victim's perspective, all of these implements inflict wounds, wounds that are neither random nor isolated. Gutter racism, parlor racism, corporate racism, and government racism work in coordination, reinforcing existing conditions of domination. Less egregious forms of racism degenerate easily into more serious forms. The Japanese-American executive who resigns in protest when his employer starts publishing anti-Japanese slogans to improve sales knows that there is a connection between racist words and racist deeds. The racially motivated beating death of Vincent Chin by unemployed white auto workers in Detroit, during a time of widesprea anti-Asian propaganda in the auto industry, was no accident.78 No was the murder of the Davis, California, high school student Tho Hy Huynh, after months of anti-Asian racial slurs.79 Violence is a necessary and inevitable part of the structure of r cism.80 It is the final solution, as fascists know, barely held at ba while the tactical weapons of segregation, disparagement, and hat propaganda do their work. The historical connection of all the too of racism is a record against which to consider a legal response t racist speech.

### Dignity/Membership

#### Hate speech isn’t individual – it’s part of a social structure that devalues people’s dignity. Public restrictions affirm the equality of all citizens and their ability to participate in the political sphere.

Stanley **Fish 12**, professor of humanities and law at Florida International University, 6-4-2012, "The Harm in Free Speech," New York Times Opinion Pages, <http://opinionator.blogs.nytimes.com/2012/06/04/the-harm-in-free-speech/?_r=0>. Internal ellipses in original. RG

But **harms to dignity**, he contends, **involve more than** the **giving** of **offense. They involve undermining a public good,** which he identifies as **the “implicit assurance” extended to every citizen that while his beliefs and allegiance may be criticized and rejected** by some of his fellow citizens, **he will** nevertheless **be viewed, even by** his polemical **opponents, as someone who has an equal right to membership** in the society. It is **the assurance** — not given explicitly at the beginning of each day but **built into the community’s mode of self-presentation** — that he belongs, that he is the undoubted bearer of a dignity he doesn’t have to struggle for. Waldron’s thesis is that **hate speech assaults that dignity** by taking away that assurance. **The very point** of hate speech, he says, “**is to negate the implicit assurance that a society offers to the members of vulnerable groups** — **that they are accepted** … as a matter of course, along with everyone else.” **Purveyors of hate** “**aim to undermine this assurance**, call it in question, **and taint it with visible expressions of hatred, exclusion and contempt**.” “Visible” is the key word. It is the visibility of leaflets, signs and pamphlets asserting that the group you belong to is un-American, unworthy of respect, and should go back where it came from that does the damage, even if you, as an individual, are not a specific target. “In its published, posted or pasted-up form, hate speech can become a world-defining activity, and those who promulgate it know very well — this is part of **their intention** — **that the visible world they create is a much harder world for the targets of their hatred to live in.**” (Appearances count.) Even though hate speech is characterized by First Amendment absolutists as a private act of expression that should be protected from government controls and sanctions, Waldron insists that “**hate speech and defamation are** actions performed in public, with a public orientation, **aimed at undermining public goods.**” That undermining is not accomplished by any particular instance of hate speech. But **just as innumerable individual automobile emissions can pollute the air, so can innumerable expressions of supposedly private hate combine to “produce a large-scale toxic effect” that operates as a “slow-acting poison.”** And since what is being poisoned is the well of public life, “**it is natural**,” says Waldron, “**to think that the law should be involved** — both in its ability to underpin the provision of public goods and in its ability to express and communicate common commitments.” After all, he reminds us, “Societies do not become well ordered by magic.”

#### Outweighs their offense – the right to membership and feeling like a part of the community is more important than the ability to express a single idea, so preserving it is key.

#### Hate speech is an act of violence that undermines respect for marginalized groups – restrictions are key to a university learning environment.

Reed E. **McConnell 12**, ‘15 is an editorial comper in Greenough Hall, 4-18-2012, "Why Harvard'S Hate Speech Policies Are Necessary," Harvard Crimson, <http://www.thecrimson.com/article/2012/4/18/hate-speech-libertarians/> RG

There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. But there is also a need to protect people from having violence perpetrated against them. **When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech** has great power. It **can**—and often does—serve as a tool to **marginalize and oppress** people. Laws that restrict hate speech simply seek to prevent violence against marginalized, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. **When our freedom to speak** our mind **impinges on** someone’s freedom from fear, or on **someone’s right to feel safe** in their community, **then that freedom should not stand unregulated** in any group that wishes to create a safe and respectful society for its members. **We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body**, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

### Discourse

#### Unfettered free speech leads to silencing of traditionally marginalized groups.

Garrett Deanna M. Garrett (Assistant Director Center for Student Conduct @ UVM), "Silenced Voices: Hate Speech Codes on Campus", [*https://www.uvm.edu/~vtconn/v20/garrett.html*](http://facebook.us6.list-manage.com/track/click?u=7eae7f86cf29ae45535f6b117&id=bd491baf71&e=84ca930af0) *GZ*

The Silencing Effect Advocates of hate speech codes contend that the inclusion of racist, sexist, and homophobic speech serves only to silence others’ voices. "Such speech not only interferes with equal educational opportunities, but also deters the exercise of other freedoms, including those secured by the First Amendment" (Strossen, 1994, p. 193). Faced with hate speech, many individuals are silenced or forced to flee, rather than engaging in dialogue (Lawrence, 1993). In higher education, dialogue is key to learning and gaining new knowledge. Students engage in dialogue with one another, challenge each other, and propose new ideas. However, racist speech does not invite this exchange but seeks to silence non-dominant individuals. Post (1994) outlines three ways in which minority groups are silenced by hateful speech: (1) Victim groups are silenced because their perspectives are systematically excluded from the dominant discourse; (2) victim groups are silenced because the pervasive stigma of racism systematically undermines and devalues their speech; and (3) victim groups are silenced because the visceral "fear, rage, [and] shock" of racist speech systematically preempts response. (p. 143)

#### Speech happens within a social context, so this outweighs and delinks their responses – hate speech is an act that takes advantage of social context to do what words on their own usually can’t.

#### Racist speech skews our values – it prevents us from having productive discussions.

Lawrence 90 Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. GZ

Blacks and other people of color are equally skeptical about the absolutist argument that even the most injurious speech must remain unregulated because in an unregulated marketplace of ideas the best ideas will rise to the top and gain acceptance. 132 Our experience tells us the opposite. We have seen too many demagogues elected by appealing to America's racism. We have seen too many good, liberal politicians shy away from the issues that might brand them as too closely allied with us. The American marketplace of ideas was founded with the idea of the racial inferiority of non-whites as one of its chief commodities, and ever since the market opened, racism has remained its most active item in trade. But it is not just the prevalence and strength of the idea of racism that makes the unregulated marketplace of ideas an untenable paradigm for those individuals who seek full and equal personhood for all. The real problem is that the idea of the racial inferiority of non-whites infects, skews, and disables the operation of the market (like a computer virus, sick cattle, or diseased wheat). Racism is irrational and often unconscious. Our belief in the inferiority of non-whites trumps good ideas that contend with it in the market, often without our even knowing it. In addition, racism makes the words and ideas of blacks and other despised minorities less saleable, regardless of their intrinsic value, in the marketplace of ideas. 136 It also decreases the total amount of speech that enters the market by coercively silencing members of those groups who are its targets.137 Racism is an epidemic infecting the marketplace of ideas and rendering it dysfunctional. Racism is ubiquitous. We are all racists. 138 Racism is also irrational. Individuals do not embrace or reject racist beliefs as the result of reasoned deliberation.139 For the most part, we do not recognize the myriad ways in which the racism pervading our history and culture influences our beliefs. In other words, most of our racism is unconscious. The disruptive and disabling effect on the market of an idea that is ubiquitous and irrational, but seldom seen or acknowledged, should be apparent. If the community is considering competing ideas about providing food for children, shelter for the homeless, or abortions for pregnant women, and the choices made among the proposed solutions are influenced by the idea that some children, families, or women are less deserving of our sympathy because they are not white, then the market is not functioning as either John Stuart Mill or Oliver Wendell Holmes envisioned it. In John Ely's terms there is a "process defect."14'

#### Completely free speech means less discussion

Lawrence 90 Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. GZ

Finally, racist speech decreases the total amount of speech that reaches the market. I noted earlier in this Article the ways in which racist speech is inextricably linked with racist conduct. The primary purpose and effect of the speech/conduct that constitutes white supremacy is the exclusion of non-whites from full participation in the body politic. Sometimes the speech/conduct of racism is direct and obvious. When the Klan burns a cross on the lawn of a black person who joined the NAACP or exercised his right to move to a formerly all-white neighborhood, the effect of this speech does not result from the persuasive power of an idea operating freely in the market. It is a threat, a threat made in the context of a history of lynchings, beatings, and economic reprisals that made good on earlier threats, a threat that silences a potential speaker. The black student who is subjected to racial epithets is likewise threatened and silenced. Certainly she, like the victim of a cross-burning, may be uncommonly brave or foolhardy and ignore the system of violence in which this abusive speech is only a bit player. But it is more likely that we, as a community, will be denied the benefit of many of her thoughts and ideas. 151 Again MacKinnon's analysis of how first amendment law misconstrues pornography is instructive. She notes that in concerning themselves only with government censorship, first amendment absolutists fail to recognize that whole segments of the population are systematically silenced by powerful private actors. "As a result, [they] cannot grasp that the speech of some silences the speech of others in a way that is not simply a matter of competition for airtime."'

### Polling/Paternalism

#### Turn: Black students specifically do not want unrestricted free speech.

HBCUs = historically black colleges and universities.

Knight Foundation 16 [Knight Foundation has established endowed chairs in journalism at top universities nationwide. The chairs are leading journalists who take positions as tenured professors within academia. They practice journalism, teach innovative classes, and create experimental projects and new programs that help lead journalism excellence in the digital age.], 09-22-2016, "HISTORICALLY BLACK COLLEGE AND UNIVERSITY STUDENTS’ VIEWS OF FREE EXPRESSION ON CAMPUS" <http://www.knightfoundation.org/reports/hbcu-free-speech-campus> DOA: 01/03/16 HSLA

Students in the national sample, including HBCU students, generally oppose policies that would restrict the expression of political views that could offend, but they support restrictions on slurs and wearing costumes that stereotype certain racial or ethnic groups on campus. On all of these matters, black students from non-HBCU colleges are most likely to favor restrictions. HBCU students’ level of support for banning slurs is similar to the national sample, but HBCU students show above average support for restrictions on stereotypical costumes and offensive political views.

Do you think colleges should or should not be able to establish policies that restrict each of the following types of speech or expression on campus? How about — [RANDOM ORDER]?

HBCU students Black students/non-HBCU schools All U.S. college students

Expressing political views that are upsetting or offensive to certain groups

% Yes, should be able to restrict 34 41 27

% No, should not be able to 65 59 72

Using slurs and other language on campus that is intentionally offensive to certain groups

% Yes, should be able to restrict 68 79 69

% No, should not be able to 32 21 31

Wearing costumes that stereotype certain racial or ethnic groups

% Yes, should be able to restrict 71 77 63

% No, should not be able to 28 23 37

#### This outweighs:

#### A. Aff is just a paternalistic policy telling students they don’t know what’s best for them, that shuts down critical education by denying students the chance to define the terms of their institutions [which is critical education Giroux likes]

#### B. Students are most familiar with their own conditions so they’re most likely correct for what works and what’s good for them.

#### C. people are less likely to use their free speech rights if they don’t agree with the of it.

#### D. epistemic humility means we should default to the perspective of the marginalized. For social justice to be possible, we must emphasize that humility educationally and socially.

INGRID ROBEYNS 7 [Chair Ethics of Institutions at Utrecht University, Faculty of Humanities and the associated Ethics Institute. Robeyns is also a Fellow of the Human Development and Capability Association.] “Epistemic humility” on NOVEMBER 7, 2013 < http://crookedtimber.org/2013/11/07/epistemic-humility/ >

A colleague who lost his teenage son due to a traffic accident 3 years ago, told us about the ‘black halo’ which remains above his head, and which only others who have lost a child are able to see. I do not doubt for a second that this is the case – that people who have not lost a child are, perhaps a very few exceptions aside, not able to truly understand w principle hat it means to lose a child, and how it changes the person you are. It reminds me of a friend who lost her father about a year after I lost mine. She had been very supportive when my father was terminally ill and died, but told me after her father died that she had no idea how hard it was until she experienced it herself. Good intentions are simply not enough to understand certain experiences [or]. I think it’s not just with experiences, but also with varieties of ‘differences’ and with social practices, being ill, and other features of human life. It is not just the death of someone near and dear that we have a hard time to understand if we haven’t experienced it ourselves; or what it means to have autism, or to live with and/or care for someone who has autism (in my experience, most people don’t understand, despite what they believe themselves about their understanding); or what it is to be constantly subjected to racism. I am confident that I have no clue what it means to grow up in abject poverty, or to live through a civil war, or to be the victim of domestic abuse. My worry is that this category of experiences, differences, practices, and other features of human life that we cannot understand without first-person experience, is much larger than we generally tend to assume. And that as a consequence, we believe that we know much more than we actually do know. And, as a further consequence, that we too often are wrong in our judgements of aspects of the lives of people significantly different than ourselves. Somehow it strikes me as wise, and possibly even as a precondition for social justice [to], if we would rehabilitate epistemic humility at the core of our educational and social practices.

### Legal Solvency

#### Putting the government on the side of equality is valuable – it affects public values and private action.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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.]

Sixth, there is a body of interrelated practical objections to bans on hate speech. Law, it is argued, cannot by itself change people’s attitudes and eliminate hatred. This is true, but it does not entail the required conclusion. Because law throws the society’s collective moral and legal weight behind a particular set of norms of good behavior, it does have some inﬂuence on attitudes; its role is limited but nonetheless important. Besides, our concern is not so much to change attitudes in the ﬁrst instance as to deny some of them public expression, and law is best equipped to achieve that. As Aristotle observed, ethics is a matter of social ethos, and the latter is shaped by habits developed through acting in certain ways. On the conventional liberal view, our beliefs are the ultimate determinants of our behavior and are, or should be, a result ofrational reﬂection. As Aristotle argued, the relationship between belief and conduct is reciprocal and complex. Our beliefs shape our conduct, but they are also in turn inﬂuenced by it. By acquiring the habit of acting in certain ways, we build up an appropriate character and develop certain attitudes and ways of thinking. Law is primarily concerned with conduct, but it also shapes citizens' character, attitudes, and beliefs.

### Spillover/AT Ruse of Solvency

#### Even if the aff doesn’t solve, it empowers targeted groups and spills over to larger antidiscrimination efforts. Multiple international empirics prove.

Parekh 12 [Parekh, Bhikhu, political theorist and Labour member of the House of Lords, (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 a ban on hate speech can easily become an end in itself and an excuse to avoid well-conceived antidiscrimination policies. Although this can happen, as arguably it has in France,” there is no obvious reason why it should. As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the conﬁdence to ﬁght for them by actively participating in public life.

### Weighing – Nonideal Theory/Historical

#### Even if their arguments about free speech are true in the abstract, the US needs to address centuries of mistreatment that prevent a level playing field. Prefer arguments specific to that context..

Helga Varden 10, University of Illinois at Urbana-Champaign, 5-22-2010, "A Kantian Conception of Free Speech," Freedom of Expression In A Diverse World, http://link.springer.com/chapter/10.1007%2F978-90-481-8999-1\_4

On the Kantian view I have been developing, hate speech and speech amounting to harassment are not outlawed because they track private wrongdoing as such, but rather because they track the state’s historical and current16 inability to provide some group(s) of citizens with rightful conditions of interaction. This type of public law tries to remedy the fact that some citizens have been and still are ‘more equal than others’. Hence, if the state finds that it is still unable successfully to provide conditions under which protection and empowerment of its historically oppressed, and thus vulnerable, are secured, then it is within its rightful powers to legally regulate speech and harassment to improve its ability to do so. By putting its weight behind historically oppressed and vulnerable citizens, the state seeks to overcome the problems caused by its lack of recognition in the past and its current failure to provide conditions in which its citizens interact with respect for one as free and equal. Therefore, whether or not any instance of speech actually achieves insult is inconsequential, for that is not the justification for the state’s right to outlaw it. Rather, laws regulating speech and harassment track the state’s systemic inability to provide rightful interaction for all of its citizens. Note that this argument does not, nor must it, determine which particular usages of hate speech and speech amounting to harassment should be banned. It only explains why certain kinds and circumstances of speech and harassment can and should be outlawed and why public law, rather than private law, is the proper means for doing so. Determining which types and how it should be banned is matter for public debate and reflection followed by public regulation on behalf of all citizens

### AT Silencing Oppressor

#### The turns I read [Garrett] prove that speech itself can be silencing, which means the question is not if silencing should happen but who should be prioritized – you should prefer innocent victims who are marginalized by past public injustices to people who are taking advantage of those injustices, since otherwise groups are mistreated for something that they have literally no control over.

### AT Not Protected – General

#### Hate speech is constitutionally protected.

Volokh 15 Eugene Volokh, Gary T. Schwartz Professor of Law at the UCLA School of Law. , No, There’s No “hate Speech” Exception to the First Amendment, The Washington Post, 5/7/15, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/07/no-theres-no-hate-speech-exception-to-the-first-amendment/> //[LADI](http://www.theladi.org/evidence)

I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech,” or “When does free speech stop and hate speech begin?” But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. But this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s [Tweet](https://twitter.com/ChrisCuomo/status/595934009764487168) that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

#### Volokh is a respected constitutional professor qualified to speak to these issues and citing specific court decisions. This is not a controversial or unsettled point of First Amendment doctrine.

### AT Not Protected – Fighting Words Exception

#### Hate speech is constitutionally protected – the fighting words exemption doesn’t get them out of the link.

Volokh 15 Eugene Volokh, Gary T. Schwartz Professor of Law at the UCLA School of Law. , No, There’s No “hate Speech” Exception to the First Amendment, The Washington Post, 5/7/15, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/07/no-theres-no-hate-speech-exception-to-the-first-amendment/> //[LADI](http://www.theladi.org/evidence)

I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech,” or “When does free speech stop and hate speech begin?” But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. But this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s [Tweet](https://twitter.com/ChrisCuomo/status/595934009764487168) that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

#### Volokh is a respected constitutional professor qualified to speak to these issues and citing specific court decisions. This is not a controversial or unsettled point of First Amendment doctrine.

### Misc Race

#### Hate speech is inherently unequal – there’s no possibility of reciprocity even if you wanted to.

Williams 05 Gwyneth Williams, prof of poli sci, “Hate speech codes on college campuses.” St Louis Journalism Review GZ [12]

Supporters of hate speech policies, however, argue that the traditional defense of free speech ignores the fact that it favors those who already hold power in a society. Liberties are not wielded equally by those who do not enjoy equally; it is an empty formalism to claim that all have equal freedom to speak. Instead, hate speech, and the tolerance of it, is used to perpetuate social hierarchies. It further marginalizes the disenfranchised. There is no "equal right" to engage in hate speech, supporters point out-after all, what is the white equivalent of calling someone a "nigger"? There is no such word that demeans whites in the way this epithet demeans African-Americans. They argue all students, especially the disadvantaged, must feel safe and accepted on a university campus if they are to experience equal access to education. Hate speech denies minorities this equal chance to learn, say the supporters of restrictive codes.

#### The chilling effect is just white fragility, shifting the conversation of racism to white feelings and there is historical precedent for speech codes.

Carpenter 16 Carpenter, Bennett. (Carpenter is a grad student of literature at Duke U.) "Free Speech, Black Lives and White Fragility." The Chronicle. Duke Student Publishing Company, 19 Jan. 2016. Web. 11 Jan. 2017. <http://www.dukechronicle.com/article/2016/01/free-speech-black-lives-and-white-fragility>. [21]

As I write my first column, I am thinking a lot about speech. I am thinking about how an urgent and overdue **conversation about racism—on our campus** and across our country—**has been derailed** **by** a diversionary and duplicitous **obsession with the First Amendment**. I am thinking about how quickly the conversation **has shifted from white supremacy to white fragility**—and how this shift is itself an expression of white supremacy.¶ White fragility refers to a range of defensive behaviors through which white people (or more accurately, people who believe they are white) deflect conversations about race and racism in order to protect themselves from race-based stress. Because **white people** tend to **live in environments where whiteness is both dominant and invisible, they grow accustomed to racial comfort**, as a result of which even a small amount of racial stress becomes intolerable. This helps explain why talking about white supremacy can feel more painful to white people than white supremacy itself, **why the ostensible "stifling" of debate can feel more pressing than the literal strangulation of Eric Garner and how "free speech" seems more important than Black lives.**¶ Needless to say, it requires an astounding degree of narcissism, ignorance and— yes—fragility to scan headlines detailing the daily, state-sanctioned slaughter of people of color and somehow conclude that speech is the real problem. **White fragility weighs the minimal discomfort of being confronted with painful realities about race and racism against the literal death of Black and brown bodies** and decides that the latter matter less than white discomfort. Which is how we end up here, talking about speech on campus and reading a dozen iterations of the same editorial in which students describe—with utterly unintentional irony—how being called out by anti-racist activists makes them feel upset and hurts their feelings.¶ This leaves those of us committed to abolishing white supremacy in a double bind. To engage with this debate is to fall for a diversionary tactic in which we again center the conversation on white feelings. To refuse to engage grants the latter a monopoly on the airways, drowning out more vital issues in an ocean of white noise. Still, in the interests of the open, honest debate the free speechers ostensibly advocate, let me try to address the constitutional and philosophical principles at play here.¶ The first point to make is that, despite the hand-wringing, I have yet to see a single example of student activists violating the First Amendment. Indeed, it is hard to imagine how they could do so, given that the latter proscribes government abridgment of speech while student activists are private citizens. Many seem to confuse "free speech" with some banal notion of civility, forgetting that the very freedoms they invoke to defend racist drivel permit anti-racists to respond—whether by calling someone out or calling for their resignation.¶

#### Rhetoric propagating free speech as the answer to social ills directly trades off with our ability to fight injustice. Free speech is a tool that courts wield in colorblind ways against people.

Delgado and Stefancic 92Richard Delgado Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. & Jean Stefancic Technical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “IMAGES OF THE OUTSIDER IN AMERICAN LAW AND CULTURE: CAN FREE EXPRESSION REMEDY SYSTEMIC SOCIAL ILLS?” Cornell Law Review. September 1992. <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3571&context=clr> GZ [18]

III. How THE SYSTEM OF FREE EXPRESSION SOMETIMES MAKES MATTERS WORSE Speech and free expression are not only poorly adapted to remedy racism, they often make matters worse-far from being stalwart friends, they can impede the cause of racial reform. First, they encourage writers, filmmakers, and other creative people to feel amoral, nonresponsible in what they do. 18 8 Because there is a marketplace of ideas, the rationalization goes, another film-maker is free to make an antiracist movie that will cancel out any minor stereotyping in the one I am making. My movie may have other redeeming qualities; besides, it is good entertainment and everyone in the industry uses stock characters like the black maid or the bumbling Asian tourist. How can one create film without stock characters? 18 9 Second, when insurgent groups attempt to use speech as an instrument of reform, courts almost invariably construe First Amendment doctrine against them.1 90 As Charles Lawrence pointed out, civil rights activists in the sixties made the greatest strides when they acted in defiance of the First Amendment as then understood. 191 They marched, were arrested and convicted; sat in, were arrested and convicted; distributed leaflets, were arrested and convicted. Many years later, after much gallant lawyering and the expenditure of untold hours of effort, the conviction might be reversed on appeal if the original action had been sufficiently prayerful, mannerly, and not too interlaced with an action component. This history of the civil rights movement does not bear out the usual assumption that the First Amendment is of great value for racial reformers. 19 2 Current First Amendment law is similarly skewed. Examination of the many "exceptions" to First Amendment protection discloses that the large majority favor the interests of the powerful. 19 3 If one says something disparaging of a wealthy and well-regarded individual, one discovers that one's words were not free after all; the wealthy individual has a type of property interest in his or her community image, damage to which is compensable even though words were the sole instrument of the harm. 194 Similarly, if one infringes the copyright or trademark of a well-known writer or industrialist, again it turns out that one's action is punishable. 19 5 Further, if one disseminates an official secret valuable to a powerful branch of the military or defense contractor, that speech is punishable. 19 If one speaks disrespectfully to a judge, police officer, teacher, military official, or other powerful authority figure, again one discovers that one's words were not free;1 9 7 and so with words used to defraud, 198 form a conspiracy, 1 99 breach the peace, 200 or untruthful words given under oath during a civil or criminal proceeding.20 1 Yet the suggestion that we create new exception to protect lowly and vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses, is often met with consternation: the First Amendment must be a seamless web; minorities, if they knew their own self-interest, should appreciate this even more than others. 20 2 This one-sidedness of free-speech doctrine makes the First Amendment much more valuable to the majority than to the minority. The system of free expression also has a powerful after-the-fact apologetic function. Elite groups use the supposed existence of a marketplace of ideas to justify their own superior position. 203 Imagine a society in which all As were rich and happy, all Bs were moderately comfortable, and all Cs were poor, stigmatized, and reviled. Imagine also that this society scrupulously believes in a free marketplace of ideas. Might not the As benefit greatly from such a system? On looking about them and observing the inequality in the distribution of wealth, longevity, happiness, and safety between themselves and the others, they might feel guilt. Perhaps their own superior position is undeserved, or at least requires explanation. But the existence of an ostensibly free marketplace of ideas renders that effort unnecessary. Rationalization is easy: our ideas, our culture competed with their more easygoing ones and won. 20 4 It was a fair fight. Our position must be deserved; the distribution of social goods must be roughly what fairness, merit, and equity call for.20 5 It is up to them to change, not us. A free market of racial depiction resists change for two final reasons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. 20 6 Through an unfortunate psychological mechanism, incessant bombardment by images of the sort described in Part I (as well as today's versions) inscribe those negative images on the souls and minds of minority persons. 20 7 Minorities internalize the stories they read, see, and hear every day. Persons of color can easily become demoralized, blame themselves, and not speak up vigorously.208 The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas. 20 9 They are often poor-indeed, one theory of racism holds that maintenance of economic inequality is its prime function2 0 -and hence unlikely to command the means to bring countervailing messages to the eyes and ears of others. Second, even when minorities do speak they have little credibility. Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intellectual inadequacy, laziness, lasciviousness, and demanding resources beyond his or her deserved share? Our very imagery of the outsider shows that, contrary to the usual view, society does not really want them to speak out effectively in their own behalf and, in fact, cannot visualize them doing so. Ask yourself: How do outsiders speak in the dominant narratives? Poorly, inarticulately, with broken syntax, short sentences, grunts, and unsophisticated ideas.21' Try to recall a single popular narrative of an eloquent, self-assured black (for example) orator or speaker. In the real world, of course, they exist in profusion. But when we stumble upon them, we are surprised: "What a welcome 'exception'!" Words, then, can wound. But the fine thing about the current situation is that one gets to enjoy a superior position and feel virtuous at the same time. By supporting the system of free expression no matter what the cost, one is upholding principle. One can belong to impeccably liberal organizations and believe one is doing the right thing, even while taking actions that are demonstrably injurious to the least privileged, most defenseless segments of our society.21 2 In time, one's actions will seem wrong and will be condemned as such, but paradigms change slowly.2 1 3 The world one helps to create-a world in which denigrating depiction is good or at least acceptable, in which minorities are buffoons, clowns, maids, or Willie Hortons, and only rarely fully individuated human beings with sensitivities, talents, personalities, and frailties-will survive into the future. One gets to create culture at outsiders' expense. And, one gets to sleep well at night, too. Racism is not a mistake, not a matter of episodic, irrational behavior carried out by vicious-willed individuals, not a throwback to a long-gone era. It is ritual assertion of supremacy, 214 like animals sneering and posturing to maintain their places in the hierarchy of the colony. It is performed largely unconsciously, just as the animals' behavior is. 2 15 Racism seems right, customary, and inoffensive to those engaged in it, while bringing psychic and pecuniary advantages.21 6 The notion that more speech, more talking, more preaching, and more lecturing can counter this system of oppression is appealing, lofty, romantic-and wrong.

#### Freedoms aren’t applied equally – students of color aren’t a part of your demonstrations because of distrust [this card is bad]

**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//[LADI](http://www.theladi.org/evidence)) [21]

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**.

#### This outweighs: It creates a ruse of solvency in which it seems as though marginalized voices are being heard even though they are not. Ruse of solvency weighing outweighs other weighing since extra-resolutional action can be used to solve problems, but not ones that look like they’ve already been solved.

## Biopower/Governmentality Turn

#### Affirmation as the sovereign as a guarantor of “free speech” reinscribes governmentality – it brackets instances conditions of violence and lets the sovereign channel them.

Muhammad Ali **Nasir 15**, May 22, 2015, 5-22-2015, "Weighing Words: On The Governmentality Of Free Speech," Social & Legal Studies, http://journals.sagepub.com.ezproxy.cul.columbia.edu/doi/full/10.1177/0964663915586472

**The peculiar** truths and **conditions under which the sovereign is to guarantee the right to freedom of expression explain the paradoxical** but primordial **relationship between free speech and the sovereign**, that is, free speech can aim at anything, including the sovereign, but it is also to be protected by the sovereign. This means that the sovereign is not the one who primarily ‘decides on the state of exception’(Schmitt, 2005: 1), but the one interlocked in between the legal norms of human rights on the one hand and the governmental practices optimizing the lives of the population on the other (Rose, 1996: 43– 44). Consequently, **the politically important question is** that **which** specific **guarantor is able to target expressivity as an object of government**, through what kind of mechanisms, under what truth conditions, and **generating which forms of power.** It is crucial because **the guarantor** who is able to perform such a task **appropriates sovereignty** onto itself in the process. Apart from the investments that constitute and sustain one’s free speech, expressivity is targeted as an object of government in another sense as well. It is in the sense of determining the specific force that a signature generates and in what manner may this be sieved through the instrument of human rights. The question then is the regulation of this force in the apt manner. Here, two dimensions of this aspect can be selectively looked at. First is the connection of expressivity to violence. Now, it is true that in human rights it is difficult to legally allow for calls that effectively incite the others to pure violence within a specific nation-state, such as those calls that present violence as both ‘necessary and justified’ (Sürek v. Turkey (No. 3), para. 40). Further, the same rationale makes it difficult to allow groups to exercise their right to freedom of expression and association who may have connections with internally operative organizations that ‘advocate the use of violence’ as a part of their political program, as the Venice Commission guidelines state (VC, 1999: 4). For example, this point can discern in Herri Batasuna v. Spain and Etxeberria v. Spain where ECtHR upheld the decisions of the Spanish authorities to cancel the candidacy of certain electoral groups in Basque country in the light of their possible links with the banned Euskadi Ta Askatasuna (ETA). Contrastively, however, calls for explicit violence in another nation-state, directed toward those others that are members of a different political organization, are protected by human rights.17 In this sense, demanding tougher economic and political sanctions against another nation-state or protesting peacefully and lobbying in favor of participation in a foreign war (that may respectively threaten the livelihood and the very being of humans out there) is allowable when it comes to the jurisprudence of the right to freedom of expression. In order to explore the interconnection of violence and free speech, Sürek is also a useful case in point. In this case, **it is not the overall milieu of violence**, along with its objectives, necessities, and rationale, **which** also **need**s **to be tested** through with respect to the standards of human rights, **but only the specific acts taking place within** such **a bracketed situation** (cf. Ireland v. the United Kingdom, para. 149). It means that **the present is bracketed** not in the sense that one does not determine through the discourse of rights the entire historical situation of nation-building and republicanism in Turkey, but in the sense that even within the then violent situation of counterinsurgency **only specific acts of violence**, linguistic or otherwise, **turn up as a legal question.** The said dynamic however is not in contradistinction to free speech because the freedom of subject stands in between the circumscription of subjectivities and the circumspection of language. **The legally protected domain of free speech therefore** does not eliminate violence, broadly construed, but **is itself related through complex transactions to violence.** One needs to study here how **free speech enables the sovereign to order violence:** that is, by helping it **frame violence** (in Sürek: the violence of the speech in question), **explore its modalities, intensities, and effectiveness** (in Sürek: the relation it forms with the violence that is existing in the southeastern Turkey, **whether this** violence **remains within or exceeds the threshold of** the **tolerable**, what is its social impact and political efficacy), **and then enabling the sovereign to deal** be**fittingly** with the violence disclosed as ‘illegitimate’ (in Sürek: not giving too much space to the rebels expressing the dismemberment of the Turkish Republic, suppressing that speech that redirects violence onto the representatives of state). What is essential to note is the fact that **the sovereign guaranteeing the right to freedom of expression is, precisely because of this process, enabled to channelize violence by shielding off those claims to sovereignty from violence that it upholds, while deflecting violence toward those that it does not** (cf. Asad, 2007: 26). Resultantly, **this process ensures that violence is not assured a reality outside law and is arrested in a juridical context** (cf. Benjamin, 1996: 239).

## Cap Turn

#### Defending free speech as an unfettered good disconnects it from class struggle – empirics prove that elevating Constitutional speech rights is coopted and causes economic deregulation.

Samuel **Moyn 16**, teaches law and history at Harvard citing (gleefully) Laura Weinrib, law professor at Harvard, 9-25-2016, "How Civil Liberties Went Mainstream," WSJ, http://www.wsj.com/articles/the-taming-of-free-speech-laura-weinrib-1474659994

Laura Weinrib overturns this simple narrative in her utterly brilliant new book. “The Taming of Free Speech: America’s Civil Liberties Compromise” shows that **civil libertarian politics originated out of a trade-unionist movement for economic justice, and** that **its conscious choice to frame itself as serving constitutional principles** above the political fray **ironically disarmed the progressive movement** out of which it was born. Relying on litigation was not what this movement originally wanted—its strategy was direct pressure on government and society for change—and the **free speech protections** the ACLU got **from the courts didn’t**, in the end, **help them fulfill progressive hopes for social justice**. The author, a law professor at the University of Chicago, reveals the intense contention among progressives around civil liberties. For most progressives, including Baldwin at the start of his career, free speech was a means to an economic end. Groups like the Industrial Workers of the World, or “Wobblies,” stood up for civil liberties, but mainly as a way to indirectly defend the right to agitate for economic reform—and especially to defend the right to strike. **Baldwin and his ACLU transformed** what had been **a means for the labor movement into an end in itself**. As Baldwin moved right with the times, concerned that no one should mix up civil liberties with communism, he worked **to free his organization from its progressive origins.** In a painstaking dive into labor movement archives, Ms. Weinrib convincingly undermines the common romantic tale of courts and judges defending freedom. She shows the ACLU and the labor movement parting ways over whether to seek salvation from judges in the first place, since they were so unlikely to support economic reform. As for perhaps the best-known case that the ACLU sponsored—Clarence Darrow in the mid-1920s arguing for John Scopes’s right to teach evolution in Tennessee—Ms. Weinrib contends that its real importance was that **the arguments civil libertarians mounted for why judges should protect Scopes’s individual freedom** actually **paralleled those that business interests had regularly made against workplace regulation.** In the tradition of Supreme Court cases like Lochner v. New York (1905) it had been business, not leftists, who insisted on the limits of government interference with individuals. To this day, civil libertarianism, and the ACLU’s version of it, are seen as barely disguised leftism in some quarters. But Ms. Weinrib shows they originated in a splinter movement within the left. In fact, **powerful corporations like Ford Motor Company get the last laugh** in Ms. Weinrib’s revisionist portrait of the 1930s and 1940s, for a culture of civil liberties is one they could accept, compared to an overreaching state meddling in their business activities. Not only did the left’s means of defending speech become separated from its ends, Ms. Weinrib demonstrates, but **free-market advocates found civil liberties surprisingly congenial to their values.** “We are neither anti-labor nor pro-labor,” Baldwin insisted in 1940. The rise of totalitarian regimes in Europe further convinced many more Americans than before that free speech was one of the country’s first principles. **And the real crucible of civil liberties in left-wing politics was forgotten.** Balanced and restrained in her writing but original and subversive in her argument, Ms. **Weinrib** stops short of offering morals from this history. Yet it is easy to draw them on one’s own. For one thing, she **puts to rest the idea that rights are by definition a progressive cause**, or for that matter a conservative one. According to Ms. Weinrib, it really does depend who advocates for them, what their larger aims are, and where different strategic choices lead. The ACLU’s turn to law and courts, she writes, “came at a cost” to the broader agenda out of which it emerged.

#### Your emphasis on collegiate spaces as the only hope for fighting neolib is bad—those without privilege can’t access those spaces. The problem is too profound for any left-wing movement within the college to fix since the most disadvantaged aren’t even in those discussions.

Edsall 12Edsall, Thomas. "The Reproduction of Privilege." *The New York Times*. The New York Times, 11 Mar. 2012. Web. 03 Jan. 2017.LS

**Instead of serving as a springboard to social mobility as it did for the first decades after World War II, college education today is reinforcing class stratification**, with **a huge majority of** the 24 percent of **Americans aged 25 to 29 currently holding a bachelor’s degree coming from families with earnings above the median income.** Seventy-four percent of those now attending colleges that are [classified as “most competitive,”](http://www.centerforpubliceducation.org/Main-Menu/Staffingstudents/Chasing-the-college-acceptance-letter-Is-it-harder-to-get-into-college-At-a-glance/What-do-you-mean-by-a-competitive-college.html) a group that includes schools like Harvard, Emory, Stanford and Notre Dame, come from families with earnings in the top income quartile, [while only three percent come](http://tcf.org/media-center/pdfs/pr19/leftbehindrc.pdf) from families in the bottom quartile. Anthony Carnevale, director of the Georgetown University Center on Education and the Workforce and co-author of “[How Increasing College Access Is Increasing Inequality, and What to Do about It](http://tcf.org/publications/2010/9/how-increasing-college-access-is-increasing-inequality-and-what-to-do-about-it/),” puts it succinctly: “**The education system is an increasingly powerful mechanism for the intergenerational reproduction of privilege**.” These anti-democratic trends are driven in part by a supposedly meritocratic selection process with high school students from the upper strata of the middle class [performing better on SAT and ACT tests](http://economix.blogs.nytimes.com/2009/08/27/sat-scores-and-family-income/) than those from poor and working class families. Contrary to those who say that this is the meritocracy at work, differences in scores on standardized tests do not fully explain class disparity in educational outcomes. When high-scoring students from low-income families are compared to similarly high-scoring students from upper-income families, 80 percent of the those in the top quarter of the income distribution go on to get college degrees, compared to just 44 percent of those in the bottom quarter. Post-secondary education is not, in fact, functioning to dissolve long-standing class hierarchies. There are various ways of examining these trends, which I’ve outlined below. However you look at it, the cultural and political implications of the deepening of the income achievement gap are profound. Beginning in the early 1980s, according to the Census, the college “premium” – [the difference in annual earnings](http://www.census.gov/newsroom/releases/archives/education/cb09-66.html) of a high school graduate and a college graduate – rose from 50 percent to approximately 80 percent. In 2007, workers with a high school degree made an average of $31,286 compared to $57,181, 82.8 percent more, for those with a bachelor’s degree. A college degree does not guarantee affluence, but it puts the recipient in a far better position to achieve or maintain upper-middle-class status than those without degrees. Higher education itself has polarized: Competitive four-year colleges, [as defined by Barron’s](http://www.centerforpubliceducation.org/Main-Menu/Staffingstudents/Chasing-the-college-acceptance-letter-Is-it-harder-to-get-into-college-At-a-glance/What-do-you-mean-by-a-competitive-college.html), have seen enrollments rise from 41 percent of all post-secondary students to 46 percent from 1994 to 2006; 2-year community colleges at the bottom have seen their share of enrollment grow from 46 to 49 percent. In the middle ground, the percent enrolled at the less competitive four-year colleges has been cut in half, from 13 to 6 percent, according to the Carnevale study mentioned above. Student bodies in competitive colleges and in community colleges reflect [two very different economic worlds](http://chronicle.com/article/Our-Economically-Polarized/129094/). At the 1,044 competitive colleges, 76 percent of the freshman came from families in the upper half of the income distribution. In the nation’s 1,000-plus community colleges, almost 80 percent of the students came from low-income families. “The education system is an increasingly powerful mechanism for the intergenerational reproduction of privilege.” — Anthony Carnevale Low income students are heavily dependent on scholarship aid to go to college, and especially dependent on grants as opposed to loans. Need-based scholarships are one way to increase low-income enrollment, but over the past three decades, the value of Pell Grants – the basic form of federal scholarship aid to poor students – has steadily declined as tuition costs have grown at a much faster rate than inflation. In 1979-80, the maximum Pell Grant covered 99 percent of the cost of a community college, 77 percent at a public four-year college and 36 percent at a private four-year college. By 2010-11, these percentages had dropped to 62, 36 and 15 percent respectively, [according to Education Week](http://www.edweek.org/media/lowincomestudents.pptx.). At the same time, **colleges, both public and private, have shifted their** own **spending priorities**, modestly increasing the investment in students from families in the lowest income quintile, while **sharply boosting their investment in education of students from the top income quintile.** The Education Trust has produced the charts [showing the shift](http://www.edtrust.org/sites/edtrust.org/files/publications/files/Lifting%20the%20Fog%20FINAL.pdf) over a 12-year period, from 1995 to 2007.

#### Outweighs: valorization of the university means that changes made only effect elites, which preserves the class structure around who gets access to any benefits and reduces pressure for unified resistence against neoliberal violence.

## Squo Solves

#### Squo solves: you can express your ideas in a reasonable time, place, or manner. Lawrence 89:

Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. GZ

Carefully drafted university regulations would bar the use of words as assault weapons and leave unregulated even the most heinous of ideas when those ideas are presented at times and places and in manners that provide an opportunity for reasoned rebuttal or escape from immediate injury. The history of the development of the right to free speech has been one of carefully evaluating the importance of free expression and its effects on other important societal interests. We have drawn the line between protected and unprotected speech before without dire results. (Courts have, for example, exempted from the protection of the First Amendment obscene speech and speech that disseminates official secrets, that defames or libels another person, or that is used to form a conspiracy or monopoly.)

#### 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.”

## Circumvention

#### Plan gets circumvented – the right to free speech isn’t enforced on campuses – Yale proves.

Kurtz 15Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. GZ

Third: “A university administration’s responsibility for assuring free expression imposes further obligations: it must act firmly when a speech is disrupted or when disruption is attempted; it must undertake to identify disruptors, and it must make known its intentions to do so beforehand.” The above passage is from Yale’s Woodward Report. Although the Woodward Report is official university policy at Yale, some of its central recommendations are apparently not being taken seriously. Consider the recent controversy over freedom of speech at Yale, where a student had to be dragged out of a lecture hall by a police officer after disrupting the William F. Buckley, Jr. Program’s conference on free speech (video here). The conduct of this student would appear to be a violation of Yale’s Undergraduate Regulations on “peaceful dissent, protests, and demonstrations” (derived from the Woodward Report), which bar any member of the University community from preventing “the orderly conduct of a University function or activity, such as a lecture, meeting...or other public event,” on pain of potential suspension or expulsion. If Yale’s regulations were being properly enforced, this student would have faced a disciplinary hearing. Ultimately, if the facts turned out to be as they appear from the video and published reports, some sort of discipline would result — at minimum, a warning that any further such actions would bring certain suspension or expulsion. To all appearances, no such discipline has taken place. And appearances are important, because a core recommendation of the Woodward Report is that in order to serve as effective deterrents to further violations, sanctions for disruption of speech must be publicized. (I have submitted a series of questions to Yale’s administration on disciplinary proceedings related to the disruption at the Buckley Program conference on free speech, and will report when I receive a reply.)